11-18-80
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Federal Register

Tuesday
November 18, 1980

Highlights

Briefings on How To Use the Federal Register—For details on briefings in Washington, D.C., see announcement in the Reader Aids section at the end of this issue.

76085 **Cuban and Haitian Entrants** Executive Order

76147 **Solid Waste Disposal** EPA makes available for comment factors affecting accumulation of cadmium by food-chain crops grown on land amended with solid waste containing cadmium; comments by 1-2-81

76128 **Income Taxes** Treasury/IRS provides final rules relating to the foreign earned income exclusion and the deduction for excess foreign living costs

76095 **Mortgage Insurance** FHLBB issues final rules concerning revision of real estate lending regulations; effective 11-17-80

76346 **Air Pollution Control** EPA proposes amendments to test methods for vinyl chloride; comments by 1-19-81 (Part II of this issue)

76356 **Prescription Drugs** HHS/FDA issues class labeling guideline for professional labeling of single-entity barbiturate drug products; effective 11-18-80 (Part III of this issue)

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76376 **Home Improvement** HUD/FHC makes changes in maximum mortgage amounts for mortgage insurance and home improvement loans; effective 11-18-80 (Part V of this issue)

76111 **Savings and Loan Associations** FHLBB amends net worth requirements imposed on institutions, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation; and issues final rules concerning investment in consumer loans, and corporate debt securities; effective 11-17-80

76404 **Air Pollution Control** EPA proposes standards that would limit atmospheric emissions from asphalt blowing stills and proposes to amend priorty list to include asphalt processing locations in the source category; comments by 1-19-81 (2 documents) (Part VI of this issue)

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76087 **Government Employees** OPM, in an interim rulemaking, amends regulations for definition of a child eligible for survivor annuity benefits and health benefits coverage; comments by 1-19-81

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Presidential Documents

Title 3—

The President

Executive Order 12251 of November 15, 1980

Cuban and Haitian Entrants

By the authority vested in me as President of the United States of America by Section 501 of the Refugee Education Assistance Act of 1980 (Public Law 96–422), Chapter III of Title I of the Supplemental Appropriations and Rescission Act, 1980 (94 Stat. 865; Public Law 96–304), and Section 301 of Title 3 of the United States Code, and in order to provide for assistance to be made available relating to Cuban and Haitian entrants, it is hereby ordered as follows:

1–101. The Secretary of Health and Human Services is delegated the authorities vested in the President pursuant to Sections 501 (a) and (b) of the Refugee Education Assistance Act.

1–102. The funds appropriated to the President for Special Migration and Refugee Assistance in Chapter III of Title I of the Supplemental Appropriations and Rescission Act, 1980, are hereby made available to the Secretary of Health and Human Services to reimburse State and local governments for cash and medical assistance and social services pursuant to Section 1–101 of this Order.

1–103. All the functions vested in the President by Section 501(c) of the Refugee Education Assistance Act of 1980, are hereby delegated to the Secretary of Health and Human Services.

1–104. In carrying out the functions delegated to him by Section 1–103 of this Order, the Secretary of Health and Human Services shall ensure that among the actions he takes or directs from time to time, he shall promptly take action which provides assistance for those Cuban and Haitian entrants located or to be located at Fort Indiantown Gap, Fort McCoy, Fort Chaffee, Fort Allen, existing processing and reception sites in Florida, and such other sites as he may designate.

1–105. Executive Order No. 12246 of October 10, 1980, is revoked.

1–106. This Order is effective November 15, 1980.

THE WHITE HOUSE,
November 15, 1980.

Jimmy Carter

[FR Doc. 80–36151
Filed 11–17–80; 11:06 am]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

Allowances and Differentials; Remote Worksite Commuting Allowance

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: OPM is increasing the daily mileage allowance schedule and the public transportation offset amount for the Remote Worksite Commuting Allowance program to reflect increases in automobile operating costs and increases in public transit costs.

EFFECTIVE DATE: This schedule will become effective the first day of the first pay period on or after December 28, 1980.

FOR FURTHER INFORMATION CONTACT: Richard J. Carney, (202) 632–6327.

SUPPLEMENTARY INFORMATION: The daily mileage allowance schedule is used to compute employee allowance entitlement in commuting to those eligible remote duty posts where daily commuting by motor vehicle is practicable. This allowance schedule is based on the costs of operation (but not ownership) of an automobile. OPM has increased the allowance schedule because of increases in costs of gasoline, oil, tires, maintenance and repairs. Based on changes in public transportation costs in selected cities around the country, OPM also increases to $1.08 the public transportation offset amount for those commuting situations in which employees use agency-provided transportation and for which a fee is charged. The current amount is 70 cents for each round trip and may be found in subchapter S3.6(1)(a) of Book 591, FPM Supplement 990–2.

On May 30, 1980 OPM published proposed rules (at 45 FR 36416) for public comment. The comment period ended July 29, 1980. Comments on these changes were received from one Federal agency and three labor organizations. The agency and two of the labor organizations support the changes. The other labor organization believes that the mileage rates are inadequate because they do not include the cost of vehicle ownership (which includes depreciation). Since the program was enacted in law in 1971 the mileage rates have never included the cost of ownership. Only those cost items related to vehicle operation are included in the mileage rate computation. These include the cost of gas, oil, tires, and maintenance and repairs.

Ownership costs have not been considered in computing the mileage rates because in OPM's judgment these costs are not directly affected by or cannot be attributed directly to employment at a remote post of duty, as such. Ownership costs include such items as purchase price, finance charges, licensing fees, taxes, insurance and depreciation. These costs may differ from place to place for a variety of reasons but are not likely to be affected because of duty at a remote post under the allowance program. Vehicle depreciation is an economic factor that can be affected by several variables. These include: Vehicle age; length of ownership; mileage; model and body type; manufacturer; mileage efficiency; standard vs. optional equipment; condition of body; mechanical condition; general level of inflation; price of new replacement vehicle; and supply/demand in used car market. As with other ownership costs, the rate of depreciation may also differ from place to place for a variety of reasons, but is not likely to be affected significantly solely because of duty at a remote post under the allowance program. Accordingly, the mileage rates reflect only operating costs and not ownership costs. OPM has determined that this is a significant regulatory change for the purposes of E.O. 12044.

Office of Personnel Management.
Beverly M. Jones,
Issuance System Manager.

PART 591—ALLOWANCES AND DIFFERENTIALS

Accordingly, the Office of Personnel Management amends Appendix A to Subpart C of Part 591 of the Title 5, Code of Federal Regulations, to read as follows:

Appendix A of Subpart C—Daily Transportation Allowance Schedules, Commuting Over Land by Private Motor Vehicle to Remote Duty Posts

	Degree A	Degree B	Degree C
Round trip distance in excess of 50 miles			
Up to 9 miles	$0.40	$0.42	$0.44
10 to 19	1.40	1.47	1.54
20 to 29	2.40	2.52	2.64
30 to 39	3.40	3.57	3.74
40 to 49	4.40	4.62	4.84
50 to 59	5.40	5.67	5.94
60 to 69	6.40	6.72	7.04
70 to 79	7.40	7.77	8.14
80 to 89	8.40	8.82	9.24
90 to 99	9.40	9.87	10.00
100 to 109	[1]10.00	[1]10.00	[1]10.00
110 to 119	10.00	10.00	10.00
120 to 129	10.00	10.00	10.00
130 to 139	10.00	10.00	10.00
140 to 149	10.00	10.00	10.00
150 to 159	10.00	10.00	10.00
160 to 169	10.00	10.00	10.00
170 and over	10.00	10.00	10.00

[1]Under the statute, $10 a day is the maximum allowance.

(5 U.S.C. 5942; EO 11609)

[FR Doc. 80-35913 Filed 11-17-80; 8:45 am]
BILLING CODE 6325-01-M

5 CFR Parts 831 and 890

Civil Service Retirement Program and Federal Employees Health Benefits Program; Definition of a Child Eligible for Survivor Annuity Benefits and Health Benefits Coverage.

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking, with comments requested.

SUMMARY: OPM is amending its regulations for the Civil Service Retirement (CSR) and Federal Employees Health Benefits (FEHB) Programs to include examples of proofs which may be accepted as evidence of a child's dependency and statements of the conditions under which it may be necessary to deny survivor benefits from the CSR System and coverage as a

family member under the FEHB Program to a child, even though the child was, or is, a dependent. This action is being taken to bring the regulations into conformance with recent legislation.

DATES:

Effective date: January 2, 1980 through the date that final regulations are issued.

Comment date: Comments must be received on or before January 19, 1981.

ADDRESS: Send or deliver written comments to Craig B. Pettibone, Director, Office of Pay and Benefits Policy, P.O. Box 57, Compensation Group, Office of Personnel Management, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT: Mary Angel, (202)–632–4684).

SUPPLEMENTARY INFORMATION: From October 1, 1956 through January 1, 1980, the definition of a child eligible for survivor annuity benefits under the Civil Service Retirement (CSR) law included a natural child who ". . . lived with the Member or employee in a regular parent-child relationship." Prior to December 1, 1977, the CSR System interpreted the "lived with" requirement to mean that a natural child must have lived with the employee or Member at the time of his or her death to be eligible for survivor annuity benefits. A series of court decisions since that date prompted OPM to liberalize the definition of "child." These decisions are summarized as follows:

Proctor v. *U.S.* (446 F. Supp. 418) declared the "lived with" requirement unconstitutional and prohibited OPM from applying it. To comply with the court order, effective December 1, 1977, OPM no longer required that a natural child have lived with the deceased employee or Member. *Jenkins* v. *C.S.C.* (460 F. Supp. 611) retroactively extended the effect of *Proctor* v. *U.S.* to cover children whose employee/annuitant parents died on February 24, 1972 or after. *Jenkins* is still pending on appeal and pending further proceedings in that case, December 1, 1977 will remain the earliest date for payment of benefits. The Supreme Court has ruled in *U.S.* v. *Clark*, No. 781513, February 26, 1980, that the pre-January 2, 1980 "lived with" requirement is met if the natural child lived with the decedent at any time; the child need not have been living with the decedent at the time of his or her death to be eligible for survior annuity benefits. *U.S.* v. *Clark* involved the surviving natural children of an employee who died in 1974.

Also, from the inception of the FEHB Program in July 1960 through January 1, 1980, the definition of a child eligible for coverage as a family member under the FEHB law included a natural child who lived ". . . with the employee or annuitant in a regular parent-child relationship."

Effective January 2, 1980, Public Law 96–179 amended the CSR Law and the FEHB law to remove the "lived with" requirement for natural children and to substitute a dependency requirement for all children. These regulations are written to provide standards for determining whether a child is a dependent.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, OPM proposes to amend Parts 831 and 890 of Title 5, Code of Federal Regulations, as shown below.

1. The table of sections for Subpart J, Part 831, is revised to read as follows:

PART 831—RETIREMENT

* * * * *

Subpart J—Death Benefits

Sec.

831.1001 Time for filing applications.
831.1002 Effective dates of survivor annuities.
831.1003 Designation of beneficiary.
831.1004 Designation of agent.
831.1005 Proof of dependency.
831.1006 Exceptions.

* * * * *

Authority: 5 U.S.C. 8341.

2. Sections 831.1005 and 831.1006 are added to read as follows:

§ 831.1005 Proof of dependency.

(a) A child is considered to have been dependent on the deceased employee or Member if he or she is:

(1) A legitimate child;

(2) An adopted child;

(3) A child for whom petition of adoption was filed by the employee or Member;

(4) A stepchild or recognized natural child who lived with the employee or Member in a regular parent-child relationship;

(5) A recognized natural child for whom a judicial determination of support has been obtained; or

(6) A recognized natural child to whose support the employee or Member made regular and substantial contributions.

(b) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support.

(1) Evidence of eligibility as a dependent child for benefits under other State or Federal programs;

(2) Proof of inclusion of the child as a dependent on the decedents' income tax returns for the years immediately before the employee's or Member's death;

(3) Cancelled checks, money orders, or receipts for periodic payments received from the employee or Member for or on behalf of the child;

(4) Evidence of goods or services which show regular and substantial contributions;

(5) Proof of coverage of the child as a family member under the employee's or Member's health benefits enrollment;

(6) Any other proof which OPM shall find to be sufficient proof of support or of paternity or maternity.

§ 831.1006 Exceptions

Survivor benefits may be denied to a child:

(a) If evidence shows that the deceased employee or Member did not recognize the child as his or her own despite a willingness to support the child, or

(b) If evidence calls the child's paternity or maternity into doubt, despite the deceased employee's or Member's recognition and support of the child.

(Pub. L. 96–179)

3. Section 890.302 (b), (c), (d), and (e) are redesignated as paragraphs (d), (e), (f), and (g) respectively and new paragraphs (b) and (c) are added to read as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

§ 890.302 Coverage of family members.

* * * * *

(b) *Proof of dependency.* (1) A child is considered to be dependent on an enrolled employee or annuitant if he or she is:

(i) A legitimate child;

(ii) An adopted child;

(iii) A stepchild, foster child, or recognized natural child who lives with the enrolled employee or annuitant in a regular parent-child relationship;

(iv) A recognized natural child for whom a judicial determination of support has been obtained; or

(v) A recognized natural child to whose support the enrolled employee or annuitant made regular and substantial contribution.

(2) The following are examples of proof of regular and substantial support. More than one of the following proofs may be required to show support.

(i) Evidence of eligibility as a dependent child for benefits under State or Federal programs;

(ii) Proof of inclusion of the child as a dependent on the enrolled employee's or annuitant's income tax returns;

(iii) Cancelled checks, money orders, or receipts for periodic payments from the enrolled employee or annuitant for or on behalf of the child;

(iv) Evidence of goods or services which show regular and substantial contributions;

(v) Any other evidence which OPM shall find to be sufficient proof of support or of paternity or maternity.

(c) *Exceptions.* Coverage as a family member may be denied:

(1) if evidence shows that the employee or annuitant did not recognize the child as his or her own despite a willingness to support the child, or

(2) if evidence calls the child's paternity or maternity into doubt, despite the employee's or annuitant's recognition and support of the child.

(Pub. L. 96-179)

[FR Doc. 80-35943 Filed 11-17-80 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1980

[FCDA No. 10.428,Economic Emergency Loans]

Economic Emergency Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations on guaranteed Economic Emergency (EE) Loans. This action is required to fully implement the provisions of recently enacted legislation, clarify the policies set forth in the regulations, and to incorporate certain changes which were published as a proposed rule in the the Federal Register (45 FR 12827) on February 27, 1980. This action is intended to strengthen the test for credit elsewhere requirements, clarify the use and terms of EE loans, provide for a change in the form of an applicant, expand and clarify the definitions of "aquaculture" and "bona fide farmer", and set forth the procedure for extending "line of credit agreements".

DATES: Effective date: Effective on November 18, 1980.

Comment date: Comments are due on or before January 19, 1981.

The reporting and recordkeeping requirements contained in this rule will be submitted for approval by the Office of Management and Budget (OMB) in accordance with the Federal Reports Act of 1942. If OMB does not approve, without change, the reporting and recordkeeping requirements contained in this rule, FmHA will revise the rule as necessary to comply with the decision of OMB. FmHA will publish a notice in a future issue of the Federal Register concerning OMB's decision on these requirements.

ADDRESS: Submit written comments in duplicate to the Office of the Chief, Directives Management Branch, FmHA, USDA, Room 6346-S, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT: Mr. William Krause, FmHA, USDA, Room 5344, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. Telephone: (202) 447-6257.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under procedures established in Secretary's Memorandum No. 1955 to implement Executive Order 12044, and has been classified as "significant."

The emergency nature of this action warrants publication of this final action without completion of a Final Impact Statement A Final Impact Statement will be developed after public comments have been received.

Mr. Alex P. Mercure, Assistant Secretary for Rural Development, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period prior to this final action in order to implement the provisions of Public Law 96-220 to continue the guaranteed EE loan program which was recently suspended pending the publication of this action. It is imperative that guaranteed EE loans be made readily available to assist farmers, ranchers, and aquaculture operators who are suffering economic stresses due to extreme adverse economic conditions and cannot obtain agricultural credit without an FmHA guarantee.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register. Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the Federal Register as soon as possible.

OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects is not applicable to this action.

Various sections of Subpart F of Part 1980, Chapter XVIII, Title 7, Code of Federal Regulations are amended to include the provisions of Public Law 96-220, enacted on March 30, 1980, which amended Title II of Pub. L. 95-334 (Emergency Agricultural Credit Act of 1978). In addition, this Subpart is amended to incorporate certain changes which were published in the Federal Register (45 FR 12827) for public comment on February 27, 1980. No comments were received on that proposal.

In addition to these changes, the change to the introductory paragraph of § 1980.512 (b) and the change to § 1980.512 (e) are needed because when they were published as a final rule in the Federal Register (44 FR 75104) on December 19, 1979, they contained inadvertent wordings which, if left unchanged, would contravene the intent of the statutory terms "bona fide farmer" and "character", respectively.

The major changes to Subpart F of Part 1980 are as follows:

1. § 1980.504 (d) is amended to expand and clarify the definition of "Aquaculture".

2. § 1980.511 (b) is amended to provide the criteria for determining if individual and entity type applicants meet the "test for credit elsewhere" requirements prescribed in this Subpart.

3. § 1980.511 (c) is amended to add subparagraph (11) to show that Form FmHA 449-10, "Applicant's Environmental Impact Evaluation," should be included when applicable.

4. § 1980.511 (d)(1) is amended to require County Supervisors to determine if environmental requirements are complied with in complete EE loan applications; and to require, under certain conditions, that applications with alternate fuels proposals be forwarded to the State Office's Engineer for review and technical approval.

5. § 1980.512 (b) and (b)(1) are amended to require an individual applicant or the members of the applicant's family to devote more than 50 percent of their time to agricultural production rather than 50 percent of the time needed to operate the farm. It is also amended to stipulate the period of time a bona fide farmer must be actually engaged in farming to qualify for an EE loan.

6. § 1980.512 (c) is added to provide for a change in the form of individual and entity type EE loan applicants.

7. § 1980.512 (e) is amended to emphasize repayment ability and reliability when determining an applicant's character.

8. § 1980.512 (f) is amended to require that an EE loan cannot be guaranteed unless the applicant's normal lender(s) and another lender(s) certify that it is unwilling to provide credit to the applicant without an FmHA guarantee.

9. § 1980.513 *Administrative* A, paragraph 3 is added to require the approval official to complete any applicable reviews as prescribed in § 1980.523 of this Subpart.

10. § 1980.515 (c) is amended to clarify that the total amount of EE loans, when added to the principal balance(s) of existing FmHA, Farm Ownership (FO), Operating (OL), Recreation (RL), or Soil and Water (SW) type loans, cannot exceed the $650,000 statutory limitation set for the combination of such loans.

11. § 1980.516 (a)(8) is amended to clarify that EE loan funds may be used to pay other taxes due or about to become due in addition to delinquent real estate and personal property taxes.

12. § 1980.516 (a)(9) is amended to explicitly state that EE loan funds may be used under certain conditions to pay a reasonable fee(s) for recordkeeping and related farm management services.

13. § 1980.516 (b)(1) is amended to clarify that EE loan funds may be used to finance alcohol fuel and methane gas facilities when necessary to have a viable farming operation.

14. § 1980.517(a)(7) is added to prohibit the use of EE loan funds to refinance farm and home real estate debts secured by real estate purchased by the applicant less than one year before the date of the EE loan application.

15. § 1980.517 (d)(2) is amended to explicitly state that any unguaranteed loan(s) made by the lender to the applicant will not be considered in complying with the $650,000 statutory maximum set for the combined total of FmHA's insured and graranteed EE, FO, OL, RL and SW loans.

16. § 1980.518 (c)(3) is amended to normally restrict the terms of EE loans guaranteed for real estate purposes to 30 years and to show the conditions that must be met to justify a 40-year repayment period.

17. § 1980.518 (f) is added to set forth the procedure for extending a "Line of Credit Agreement(s)".

18. Appendix E—Form FmHA 1980–32 is amended to conform with the "bona fide farmer" requirement of § 1980.512 (b) for individual applicants and to add a new item in which the lender certifies as to the legality of the interest rate being charged the applicant.

(FCDA No. 10.428, Economic Regulatory Loans)

Accordingly, Subpart F of Part 1980 is amended as follows:

PART 1980—GENERAL

Subpart F—Economic Emergency Loans

1. § 1980.504 (d) is revised to read as follows:

§ 1980.504 Definitions.

* * * * *

(d) *Aquaculture.* The husbandry of aquatic organisms by an applicant or borrower under a controlled or selected environment. Aquaculture operations are considered to be farming operations. Aquatic organisms may consist of any species of finfish, mollusk, crustacean (or other invertebrate), amphibian, reptile, or aquatic plant. An aquaculture operation is considered to be a farm only if it is conducted on grounds which the applicant owns, leases, or has an exclusive right to use. An exclusive right to use must be evidenced by a permit issued to the applicant and the permit must specifically identify the waters available to be used by the applicant only.

* * * * *

2. § 1980.511 (b) is revised, (c)(11) is added, (d)(1) and (2) are renumbered to (d)(2) and (3) respectively without change, and a new (d)(1) is added to read as follows:

§ 1980.511 Receiving and processing applications.

* * * * *

(b) *Evaluation of preliminary applications.* If it appears, after a review of the preliminary application, that the proposal will not meet FmHA's minimum credit standards for a sound loan, or the County Committee determines the applicant to be ineligible, or funds or guarantee authority are not available, the County Supervisor will so inform the lender using Form FmHA 449–13, "Denial Letter." The lender will notify the applicant in writing of all the reasons for the decision indicated. If it appears that the proposal is economically feasible, the County Committee determines that the applicant is otherwise eligible, and loan guarantee authority is available, the County Supervisor will inform the lender in writing and request that a formal application be prepared *but only after* the following paragraphs are complied with:

(1) If the EE loan(s) requested is less than $300,000, the following actions will be taken:

(i) When it appears from a review of the application that it would be unduly burdensome to require the applicant to obtain written declinations of credit without an FmHA guarantee from other lenders, the County Supervisor may make an exception to this requirement, provided the County Supervisor knows the other lender's programs well enough to determine that no possibility exists for the applicant to obtain the credit needed from these lenders. This conclusion and the basis for it will be recorded in the running record and further checks will not be necessary. However, the applicant's normal lender(s), if different than the lender requesting the guarantee, *must be contacted in all cases* and the findings will be recorded in the running record.

(ii) If the County Supervisor questions whether the applicant is unable to obtain the credit needed from other agricultural lenders in the area, such lenders will be contacted. The lenders contacted will be requested to submit a letter to the County Office stating whether they will extend the credit needed by the applicant. If one or more of the lending sources contacted will provide the applicant with sufficient credit to finance actual needs at reasonable rates and terms taking into consideration prevailing private and cooperative rates and terms in the community, the lender applying for the guarantee will be advised in writing by FmHA that the applicant is not eligible for a guaranteed EE loan because of the availability of needed credit without an FmHA guarantee. A copy of this letter will be sent to the applicant. If the County Supervisor believes it necessary, the action required in paragraph (b)(2) of this section can be taken.

(iii) When the County Supervisor receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, this will be included in the loan docket. Such evidence will not preclude the County Supervisor from contacting other farm lenders in the area and making an independent determination of the applicant's ability to obtain credit elsewhere without an FmHA guarantee.

(2) If the EE loan(s) request is $300,000 or more, the following actions will be taken:

(i) The applicant will be required to apply at not less than three conventional lending sources, including the Production Credit Association or Federal Land Bank, as appropriate, in the local community. However, when an

applicant has a net worth of $1 million or more but cannot obtain credit in the local community without an FmHA guarantee, the applicant will be required to contact at least two other lending sources out of the local area, including the applicant's normal lender(s) even if *not* located in the local community.

(ii) All lending sources contacted will be requested to submit a letter to the County Office stating whether they will extend the credit needed by the applicant without an FmHA guarantee. If one or more of the lending sources contacted will provide the applicant with sufficient credit to finance actual needs at reasonable rates and terms taking into consideration prevailing private and cooperative rates and terms in the community, the lender applying for the guarantee will be advised in writing by FmHA that the applicant is not eligible for a guaranteed EE loan because of the availability of needed credit without an FmHA guarantee. A copy of this letter will be sent to the applicant. Only if the applicant is not able to obtain a loan—without an FmHA guarantee—from the lending sources contacted, will the applicant be considered for a guaranteed EE loan.

(c) Completed application: * * *

* * * * *

(11) When required by Subpart G of Part 1901 of this Chapter, Form FmHA 449-10, "Applicant's Environmental Impact Evaluation."

(d) *FmHA evaluation of application.*

* * *

(1) The County Supervisor will review the application to determine if the environmental requirements of Subpart G of Part 1901 of this Chapter are applicable.

(i) If the application includes a proposal for the production of alternate fuels (alcohol, methane or bio-gas, solar, hydroelectric, etc.) involving a design or plan that has *not* been approved by FmHA, the complete application will be forwarded to the State Office's Engineer for review and technical approval.

(ii) Upon approval or disapproval of the proposal by the State Office's Engineer, the application will be returned to the County Office with appropriate information concerning the action taken.

* * * * *

3. § 1980.512 (c) through (g) are renumbered to (d), (e), (f), (g), and (h) respectively. The introductory paragraph to §1980.512 (b), (b)(1), (e), and (f) are revised and a new subparagraph (c) is added to read as follows:

§ 1980.512 Eligibility.

* * * * *

(b) *Bona fide farmer.* Be a *bona fide* farmer (owner-operator or tenant operator), doing business in the United States either as an individual, cooperative, corporation, or partnership, that is recognized in the community as one primarily and directly engaged in agricultural production. *In the case of an individual loan applicant,* the term "primarily and directly engaged in agricultural production" means that the applicant(s) derives more than 50 percent of the gross income from the applicant's own agricultural production *or* either the applicant or family members of the applicant devote more than 50 percent of their time to such agricultural production. *In the case of a cooperative, corporation, or partnership loan applicant,* the term "primarily and directly engaged in agricultural production" means that the cooperative, corporation, or partnership derives more than 50 percent of its gross income from agricultural production *and* the member(s), shareholder(s), or partner(s) owning or controlling a majority interest in such cooperative, corporation, or partnership either derive more than 50 percent of their gross income from their own or the cooperative's, corporation's, or partnership's agricultural production, *or* devote more than 50 percent of their time to such agricultural production.

(1) A bona fide farmer must be actually engaged in farming operations to be financed by an EE loan, and must have been engaged in farming during the 12-month period or one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application. If the applicant is an individual, the applicant must manage such farming operation. If the applicant is a cooperative, corporation, or partnership, it must be managed by one or more of the members, stockholders, or partners. One who does not devote full time to the farming enterprise may be considered the manager provided the person visits the farm at sufficiently frequent intervals to exercise control over the farming enterprise, give directions as to how it should be run, and see that the enterprise is being carried on properly. Any enterprise that involves an outside full-time manager or management service does not qualify regardless of the number of visits made. In addition, as between two applications on file at the same time, FmHA will give preference to an applicant who owns and operates not larger than a family farm as defined in § 1980.504(h) of this Subpart. However, for purposes of an EE loan, this does not exclude an applicant who does not own or operate a family farm.

* * * * *

(c) *Change in the form of an applicant.* A change in the form of an applicant from an individual, partnership, cooperative, or corporation to another form of legal entity will not disqualify the new entity if it is conducting the same operation as was conducted during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application, and is primarily owned by substantially the same people that owned the operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the date of the application.

(1) When one or more *individuals* who were engaged in a farming operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application later forms a partnership, cooperative, or corporation, the operation's application may still receive consideration provided such individual(s) owns at least 50 percent of the new partnership's assets or cooperative's or corporation's voting stock and continues to manage or control the farming operation.

(2) When a *partnership* that was engaged in a farming operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application later dissolves and the operation is continued by an individual or a newly formed partnership, cooperative, or corporation, an application from the individual or the new entity will receive consideration provided one or more of the partners who managed the farming operation for the prior partnership will now manage the operation for the applicant, and provided:

(i) The assets of the prior partnerhip are now owned by an individual applicant who, as a partner in the prior partnership, had owned at least 50 percent of the partnership's assets; or

(ii) The assets of the prior partnership are now owned by a new partnership applicant and the partners who had owned at least 50 percent of the assets of the new partnership applicant; or

(iii) The assets of the prior partnership are now owned by a new cooperative or corporation applicant, and the partners of the prior partnership who owned at least 50 percent of those assets now own at least 50 percent of the voting

stock of the new cooperative or corporation applicant.

(3) When a *cooperative* that was engaged in a farming operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application dissolves but the farming operation is continued by an individual or a newly formed cooperative, corporation, or partnership, the application from the individual or new entity will receive consideration provided one or more of the members who managed the farming operation for the prior cooperative must now manage the operation for the new applicant, and provided:

(i) The assets of the dissolved cooperative are now owned by an individual who had owned at least 50 percent of the voting stock of the former cooperative, or

(ii) The assets of the former cooperative are now owned by a new partnership applicant and the members who had owned at least 50 percent of that cooperative are now partners owning at least 50 percent of the assets of the new partnership applicant, or

(iii) The assets of the former cooperative are now owned by a new cooperative or corporation applicant and the members or stockholders who had owned at least 50 percent of the voting stock of the former cooperative are now members or stockholders owning at least 50 percent of the voting stock of the new cooperative or corporation applicant.

(4) When a *corporation* that was engaged in a farming operation during the 12-month period, or during one full production and marketing cycle, whichever is the lesser, immediately preceding the application dissolves but the farming operation is continued by an individual or newly formed cooperative, corporation, or partnership, the application from the individual or new entity will receive consideration provided one or more of the stockholders who managed the farming operation for the prior corporation must now manage the farming operation for the new applicant, and provided:

(i) The assets of the dissolved corporation are now owned by an individual who had owned at least 50 percent of the voting stock of the former corporation, or

(ii) The assets of the former corporation are now owned by a new partnership applicant and the stockholders who had owned at least 50 percent of that corporation are now partners owning at least 50 percent of the assets of the new partnership applicant, or

(iii) The assets of the former corporation are now owned by a new cooperative or corporation applicant and the members or stockholders who had owned at least 50 percent of the voting stock of the former corporation are now members or stockholders owning at least 50 percent of the voting stock of the new cooperative or corporation applicant.

* * * * *

(e) *Character, industry, training, or experience and ability.* Possess the character (emphasizing repayment ability and reliability), industry, training and/or experience and ability necessary to carry out the proposed operations and honestly endeavor to carry out the undertakings and obligations in connection with the loan.

(f) *Credit elsewhere.* Be unable at the time the loan application is filed to obtain sufficient credit from either the applicant's normal lender(s) or another lender(s) without a guarantee to finance actual needs at reasonable rates and terms due to economic stresses, such as tightening of agricultural credit or an unfavorable relationship between production costs and prices received for agricultural commodities. Furthermore, no loan shall be guaranteed unless the lender applying for the guarantee certifies that it is unwilling to provide the needed credit to the applicant without the guarantee.

* * * * *

4. § 1980.513(b) is revised; *Administrative* A 3 and 4 are renumbered to A 4 and 5 respectively without change, and Administrative A 3 is added to read as follows:

§ 1980.513 County Committee review.

* * * * *

(b) *Unfavorable action.* If the County Committee finds that the applicant does not meet all of the requirements set forth in § 1980.512 of this Subpart, the members will complete Form FmHA 440–2 and the County Supervisor will inform the lender of the reasons for the Committee's unfavorable action by following the same procedure outlined in § 1980.511(d)(2) of this Subpart in using Form FmHA 449–13.

Administrative:

A. * * *

* * * * *

3. The approval official will be responsible for completing any remaining applicable reviews as prescribed in § 1980.523 of this Subpart.

* * * * *

5. § 1980.515(c) is revised as follows:

§ 1980.515 Type of guarantee.

* * * * *

(c) *Multiple guarantees.* More than one Loan Note Guarantee or Contract of Guarantee may be executed with the same or different lenders to a borrower so long as each loan is secured with separate collateral that is clearly identified. The total loans must not exceed $400,000 at any time. The limitations found in § 1980.517(d) of this Subpart must also be complied with.

* * * * *

6. § 1980.516 (a)(8), (a)(9) and (b)(1) are revised to read as follows:

§ 1980.516 Loan purposes.

(a) *Operating purposes.*

* * * * *

(8) Payment of delinquent and personal property taxes and other taxes such as income and social security taxes due or about to become due, and water or drainage charges or assessments.

(9) Payment of reasonable expenses incidental to obtaining, planning, making, and closing the loan, such as loan fees authorized in § 1980.22 of Subpart A of this Part and fees for legal, architectural, and technical services which are requried to be paid by the borrower and which cannot be paid from other funds. Loan funds also may be used to pay a reasonable fee(s) for record keeping and related farm management service(s), if necessary, to meet the objectives of the loan plus the borrower's share of Social Security taxes for labor hired by the borrower in connection with making the planned building and/or improvements. However, loan funds are *not* to be used to pay fees charged applicants by agriculture management consultants and other professionals for preparation of EE loan dockets including farm and home plans and other FmHA forms used in processing such loans.

* * * * *

(b) *Real estate purposes.* (1) Changing or reorganizing the farming operation so it will be an economically viable operating unit. Such a purpose includes the construction, improvement, alteration, repair, relocation, purchase or moving of essential service buildings, facilities, and structures on the applicant's real estate necessary for reorganization of the operation, including the purchase and/or installation or augmentation and improvement of essential farmstead water and sewage system, and other equipment or facilities necessary to the operation (including alcohol fuel and methane gas facilities, and equipment which utilizes wind or solar energy).

* * * * *

7. § 1980.517(d)(4) is renumbered to (d)(3). § 1980.517(a)(6) is revised, (a)(7) is

added and (d)(2) is revised to read as follows:

§ 1980.517 Loan limitations and special provisions.

(a) *Limitations on use of loan funds.*

* * * * *

(6) An applicant conducting farming operations as an individual or as a cooperative, corporation, or partnership may be considered for more than one EE guaranteed loan when more than one agricultural lender is involved, provided (a) identifiable separate security is given to each lender and (b) the conbined total principal balance outstanding at any one time on guaranteed loans for all lenders involved does not exceed *$400,000.* The limitations found in paragraph (d) of this section must also be complied with.

(7) EE loan funds *will not* be used to refinance farm and home real estate debts unless the real estate securing such debts was purchased by the applicant at least one year before the date of the EE loan application.

* * * * *

(d) *Relationship with other FmHA insured or guaranteed loans.*

* * * * *

(2) Applicants applying for FmHA assistance or borrowers already indebted to FmHA and/or FmHA guaranteed lender(s) for Farm Ownership (FO), Operating (OL), Recreation (RL) or Soil and Water (SW) loan(s) may be considered for EE loan(s) provided the total outstanding principal indebtedness owed to FmHA and/or the lender(s) on such loans does not exceed $650,000. [NOTE: Unguaranteed loan(s) made to the applicant by the lender(s) *will not* be included in making this determination). Applicants applying for assistance who are eligible for FO, OL, RL or SW loans, will have their credit needs considered as follows:

* * * * *

8. § 1980.518(f) is numbered to (g). § 1980.518 (c)(1), and (3) and (g)(5) are revised, and a new (f) is added to read as follows:

§ 1980.518 Loan rates and terms.

* * * * *

(c) *Loan terms for Loan Note Guarantee and Contract of Guarantee.*

(1) Loans will be scheduled for repayment at such time and periods as the lender may determine, consistent with the purpose of the loan and in accordance with the useful life of the security and the reasonable repayment ability of the applicant as determined by the plan of operation. Form FmHA 431–2, "Farm and Home Plan," may be used in establishing a plan of operation or the lender may submit a plan of operation without using FmHA forms. However, there must be at least an annual installment unless a *deferment* of principal and/or interest is authorized in accordance with subsection (g) of this section.

* * * * *

(3) Loans for real estate and items financed under § 1980.516(b) of this Subpart (*real estate purposes*) will normally be scheduled for repayment in *not more than 30 years.* Loans may be scheduled for a longer repayment period if the FmHA approval official determines that the needs of the applicant justify a longer repayment period. Such period may be approved as warranted but cannot exceed 40 years. The longer repayment period will only be used when the applicant would be unable to repay the loan in a shorter period. The reasons the longer period is given must be documented in the county office case file.

* * * * *

(f) *Extenstion of "Line of Credit Agreement".* EE loans Contracts of Guarantee do not reflect an expiration date. "Line of Credit Agreements" which have already expired cannot be extended under this subsection. However, lenders are authorized to continue making advances under *existing* Line of Credit Agreements *until September 30, 1981,* provided such Line of Credit Agreements do not expire prior to the date any new advances are made *and* subject to the following:

(1) For existing Line of Credit Agreements containing either no expiration date or an expiration date beyond September 30, 1981:

(i) The advances must be made pursuant to the terms of the *existing* Line of Credit Agreement(s) for which the Contract(s) of Guarantee was issued; and

(ii) No advances made after September 30, 1981, will be covered by the Contract(s) of Guarantee; and

(iii) No advances in excess of the limits set forth in the Contract(s) of Guarantee or Line of Credit Agreement(s) shall be covered by the Contract(s) of Guarantee.

(2) For existing Line of Credit Agreements which have not yet expired but which would expire prior to September 30, 1981, and which the lender wishes to extend:

(i) The advances must be made pursuant to the terms of the *extended* "Line of Credit Agreement(s)," as approved by FmHA for which the Contract(s) of Guarantee was issued; and

(ii) No advances made after September 30, 1981, will be covered by the Contract(s) of Guarantee; and

(iii) No advances in excess of the limits set forth in the Contract(s) of Guarantee and *extended* Line of Credit Agreement(s) shall be covered by the Contract(s) of Guarantee; and

(iv) The borrower must meet the eligibility and security requirements for an initial EE loan; and

(v) The Line of Credit Agreement(s) is extended to cover the period when new advances are to be made and adequate repayment terms are specified; and

(vi) FmHA approves the extension in writing.

* * * * *

(g) *Consolidation, rescheduling, reamortization and deferral.*

* * * * *

(5) For the actions described in paragraphs (g) (1), (2), and (3) of this section, the following will also apply:

* * * * *

9. § 1980.520 (a)(4), (b)(1), and ADMINISTRATIVE 1 are revised to read as follows:

§ 1980.520 Collateral requirements.

(a) *Collateral.*

* * * * *

(4) When FmHA and a guaranteed lender are involved in separate EE loans to the same borrower, separate collateral must be clearly identified for both the FmHA and the lender's loans.

(b) *Personal and corporate guarantee* (also considered collateral).

(1) Personal guarantees from principal members of cooperatives, principal stockholders in a corporation, or principal partners of partnerships usually will be required. Guarantees from principals of parent, subsidiary, or affiliated companies may also be required. Guarantees will be required in sufficient amounts depending on the credit factors in each loan to reasonably assure repayment of the loan and provide sufficient security.

* * * * *

Administrative: * * *

1. Review and determine whether the lender has required the necessary security to be taken. If necessary, the County Supervisor will seek the advice and assistance of the District Director. When the security is inadequate or questionable, the County Supervisor will make an appraisal of the required security.

* * * * *

10. § 1980.549 (b)(1) is revised to read as follows:

§ 1980.549 Issuance of guarantee instruments.

* * * * *

(b) *Contract of Guarantee cases.* (1) If FmHA find that all requirements have been met, FmHA will execute Form FmHA 1980–38. The original will be retained by FmHA and a signed duplicate original will be retained by the lender. Form FmHA 1980–38 will be executed for all lines of credit guaranteed by FmHA. The Lender's Agreement will be executed not later than the time the Contract of Guarantee is signed.

* * * * *

Appendices [Amended]

11. Paragraph IX C 10 of Appendix C is revised to read as follows:

Appendix C—Lender's Agreement (Emergency Livestock Loan or Economic Emergency Loan Contract of Guarantee)

* * * * *

IX. *Servicing.*

* * * * *

10. Providing FmHA a statement certified by an officer of the Lender of the unpaid principal balance of the guaranteed loan annually as of December 31.

* * * * *

12. Paragraph 3 of Appendix E is revised and paragraph 9 is added to read as follows:

Appendix E—Lender's Certification (Guaranteed Economic Emergency Loan)

* * * * *

3. Applicant is a *bona fide* farmer or rancher (owner-operator or tenant) doing business in the United States either as an individual, cooperative, corporation, or partnership which is recognized in the community as one which is primarily and directly engaged in agricultural production. *In the case of an individual loan applicant,* the term "primarily and directly engaged in agricultural production" means that the applicant derives more than 50 percent of the gross income from the applicant's own agricultural production *or* either the applicant or family members of the applicant devote more than 50 percent of their time to such agricultural production. *In the case of a cooperative, corporation, or partnership loan applicant,* the term "primarily and directly engaged in agricultural production" means that the cooperative, corporation, or partnership derives more than 50 percent of its gross income from agricultural production, *and* the member(s), shareholder(s), or partner(s) owning or controlling a majority interest in such cooperative, corporation, or partnership either derive more than 50 percent of their gross income from their own or the cooperative's, corporation's, or partnership's agricultural production, *or* devote more than 50 percent of their time to such agricultural production.

* * * * *

9. The interest rate to be paid by the borrower on the requested loan or line of credit is a fixed or variable rate of interest agreed upon between the lender and the borrower, which rate is not in excess of the lender's best rate for its best farm customers.

* * * * *

This document has been reviewed in accordance with 7 CFR Part 1901, Subpart G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

(7 U.S.C. 1989; 5 U.S.C. 301; Title II of 95–334, as amended by Pub. L. 96–220; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

Dated: October 27, 1980.

Thomas L. Burgum,

Deputy Assistant Secretary for Rural Development.

[FR Doc. 80–35990 Filed 11–17–80; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL RESERVE SYSTEM

12 CFR Part 211

[Regulation K; Docket No. R–0290]

International Banking Operations; Additional Investments Under General Consent Procedures

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System has adopted a final rule to amend provisions of Regulation K governing investments by member banks, Edge and Agreement Corporations, and bank holding companies ("investors"). Under current regulations, the Board has granted its general consent for an investor to make certain additional investments in an organization in which it already has an investment, in relation to the investor's historical cost in the organization. In response to many inquiries from banking organizations, the Board proposed a revised rule on April 30, 1980, to clarify certain rights of accumulation under the provision, and to limit the amount that may be invested under this provision of the general consent in one organization to 10 per cent of the investor's capital and surplus.

EFFECTIVE DATE: November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Michael L. Kadish, Attorney, Legal Division (202–452–3428), or Henry N. Schiffman, Division of Banking Supervision and Regulation (202–452–2523), Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: On June 14, 1979, the Board revised its regulations governing the international operations of member banks, Edge and Agreement Corporations, and bank holding companies and consolidated them into one regulation, Regulation K. Section 211.5 of Regulation K sets forth the kinds of investments that are permissible for U.S. banking organizations and establishes procedures by which such investments may be made. In paragraph (c)(1)(ii) of that section, the Board granted its general consent (*i.e.,* no prior notification to or approval of the Board required) for the making of limited additional investments in an organization in which the investor already has an interest, in order to afford U.S. banking organizations a degree of flexibility in managing their foreign investments.

Inquiries from several U.S. banking organizations indicated that this part of the regulation was not having its intended effect. On April 30, 1980, the Board proposed to amend the section to:

1. Define "historical cost," which is the basis by which the authority to make additional investments under the general consent is measured;

2. Clarify the circumstances in which dividends could be reinvested under general consent;

3. Define general consent investment rights primarily in terms of percentages of historical cost without reference to accumulation of rights; and

4. Limit the size of additional investments that could be made under this provision to 10 per cent of an investor's capital and surplus.

The proposed rule would have amended § 211.5(c)(1)(ii) to clarify that an investor may reinvest cash dividends under general consent only in the year in which they are received. The final rule adds a new § 211.5(c)(1)(iii), which grants the Board's general consent to reinvest dividends within one year after the date of receipt of such dividends. The right to reinvest dividends received would be noncumulative under the final rule.

The rule as proposed generally would have permitted an investor to make additional investments in an amount not exceeding the sum of 50 per cent of historical cost plus cash dividends received during the year less any amounts that it has invested in the organization (including dividends reinvested) during the previous four

calendar years. The final rule provides that dividends reinvested within one year of receipt do not reduce the additional investment that may be made under general consent. The final rule also provides that any investment in an organization, pursuant to section 211.5(c), will reduce the additional amount that an investor may invest in that organization in any year under general consent.

Finally, the Board adopted, substantially as proposed, a provision defining "historical cost", and a provision limiting additional investments that may be made under general consent procedures to 10 per cent of the investor's capital and surplus. An investment exceeding this limit would have to be made under specific consent procedures.

This action is taken pursuant to the Board's authority under sections 25 and 25(a) of the Federal Reserve Act (12 U.S.C. 601, 615) and section 4(c)(13) of the Bank Holding Company Act (12 U.S.C. 1843(c)(13)).

Effective November 12, 1980, Part 211 of 12 CFR Chapter II is amended as follows:

By revising § 211.5(c)(1)(ii) and redesignating paragraph (c)(1)(iii) as (c)(1)(iv) and adding a new paragraph (c)(1)(iii) as follows:

§ 211.5 Investments in other organizations.

* * * * *

(c) *Investment Procedures.*

* * * * *

(1) *General consent.* The Board grants its general consent for the following:

* * * * *

(ii) Any additional investment in an organization in any calendar year so long as (A) the investment does not cause the organization to be a direct or indirect subsidiary or joint venture of the investor; (B) the total amount invested in that calendar year does not exceed 10 per cent of investor's capital and surplus; and, (C) the total amount invested under Part 211 in the current calendar year does not exceed cash dividends reinvested pursuant to paragraph (iii) below plus the greater of (*1*) 10 per cent of the investor's direct and indirect historical cost [6] in such organization, or (*2*) 50 per cent of the investor's direct and indirect historical cost in that organization less any amounts invested in that organization during the previous four calendar years (excluding dividends reinvested pursuant to paragraph (iii) below); or

(iii) Any additional investment in an organization in an amount equal to cash dividends received from that organization during the preceding 12 calendar months so long as such investment does not cause the organization to be a direct or indirect subsidiary or joint venture of the investor; or

(iv) * * *

By Order of the Board of Governors, effective November 12, 1980.

Theodore E. Allison,

Secretary of the Board.

[FR Doc 80-35942 Filed 11-17-80 8:45 am]

BILLING CODE 6210-01-M

[6] The "historical cost" of an investment consists of the actual amounts paid for shares or otherwise contributed to the capital accounts, as measured in dollars at the exchange rate in effect at the time each investment was made. It does not include subordinated debt or unpaid commitments to invest even though these may be considered investments for other purposes of this Part. For investments acquired indirectly as a result of acquiring a subsidiary, the historical cost to the investor is measured as of the date of acquisition of the subsidiary; at the net asset value of the equity interest in the case of subsidiaries and joint ventures, and in the case of portfolio investments, at the book carrying value.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 525, 541, 545, and 563

[No. 80-700]

Revision of Real Estate Lending Regulations

Dated: November 10, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final regulations.

SUMMARY: These final regulations implement in part Title IV of the Depository Institutions Deregulation and Monetary Control Act of 1980, which comprehensively revised and expanded the real estate lending authority of Federal savings and loan associations. Major changes include the lifting of restrictions on location of security property, lien priority and dollar amount of loans.

EFFECTIVE DATE: November 17, 1980.

FOR FURTHER INFORMATION CONTACT: Nancy L. Feldman, Associate General Counsel, (202) 377-6440, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: The Depository Institutions Deregulation and Monetary Control Act of 1980 ("Act"), Pub. L. 96-221, 94 Stat. 132, greatly expanded the investment powers of Federal savings and loan associations; an important part of this expansion is set forth in section 401 of Title IV of the Act, which revised section 5(c) of the Home Owners Loan Act of 1933 (12 U.S.C. 1464(c)) with regard to the real-estate-related lending authority of Federals.

On July 31, 1980, the Federal Home Loan Bank Board proposed to implement the statutory amendments through comprehensive changes to its lending regulations. Since a major purpose of expanding Federal associations' lending authority was to make them more competitive with other financial institutions, the Board proposed not only to remove restrictions no longer mandated by statute, but also to rescind some of its current rules which set forth detailed lending procedures the Board believed should more properly be determined by an association's management. The Board also proposed to regroup its lending regulations to better reflect the proposed changes, and to delete provisions in other parts of its regulations which would be inconsistent with such changes.

The Board received 100 comment letters from Federal and state-chartered savings and loan associations and other mortgage lenders, trade groups, mortgage insurers, consumers and others. Respondents were overwhelmingly in favor of the proposed lifting of regulatory restrictions, although many suggested modification of specific provisions. In response to comments received and other pertinent information available, the Board has determined to adopt the regulatory amendments substantially as proposed, with modifications described below.

Definition of Real Estate Loans

The Act eliminated the first-lien security requirements previously applied to Federal associations' basic residential lending authority, thus allowing investment in real estate loans on the security of junior liens. In order to differentiate real estate loans where appraisals and other loan-closing services are appropriate from real-estate-secured consumer loans and home-improvement loans based primarily on the creditworthiness of the borrower, 12 CFR 545.6 ("Real estate loans") has been amended to characterize a real estate loan as any loan secured by real estate where the association relies substantially on that real estate as the primary security for the loan. The Board expects that loans to finance the purchase of real estate, where that real estate secures the loan, ordinarily will be characterized as real estate loans.

Determination of Loan-To-Value Ratios for Junior Liens

The Board's proposal required that associations making loans on the security of junior liens prepare and maintain documentation sufficient to indicate that the total liens on the property do not exceed applicable loan-to-value ratios. Estimations of such ratios would reflect a current appraisal of the property at the time the association's loan is to be made and, if such loan is for improvement of the security property, could include an estimate of the expected value of the property after completion of such improvements.

Commenters suggested four exclusions from the computation of total prior liens: (1) unrecorded liens, (2) the paid portion of existing loans, (3) liens as to which the lienholder agrees to take a subrogated position to the association's lien, and (4) encumbrances that would be paid off out of the proceeds of the new loan. The Board believes that these suggestions are consistent with its requirement that the loan-to-value-ratio determination address only those encumbrances which would take precedence to the association's lien, and has amended the proposed provision accordingly.

In response to questions regarding the meaning of "value" in connection with appraised value of real estate, this term has been defined as market value.

Insured and Guaranteed Loans

Specific required percentages of FHA insurance and VA guarantee of loans have been deleted from 12 CFR 545.6–1, which authorizes investment in such loans, on the ground that they are unnecessary. The regulation now requires only that associations meet terms and conditions of repayment acceptable to the insuring or guaranteeing agency.

Loans to finance land development that are insured under Title X of the National Housing Act, which were treated separately under 12 CFR 545.6–7, are now included in § 545.6–1.

The Board's regulations provide that private mortgage insurance is not necessary for a low-downpayment loan that is insured or guaranteed by a state agency pledging its full faith and credit to support the insurance or guarantee. The Board's proposal offered an alternative to the full-faith-and-credit requirement by including in the authorization state insurance or guarantee programs approved by the Federal Home Loan Mortgage Corporation. The Board believes that this alternative will be helpful to consumers in states that have sound programs that insure or guarantee only a portion of each loan. Because the FHLMC does not currently have an approval process for public insurers, the Board has amended the proposed provision to include state programs approved by the Federal National Mortgage Corporation, which does have such a process.

Dollar Limits on Loans

The Act eliminated the previous statutory dollar restrictions on home loans ($75,000; $112,500 for loans secured by real estate in Alaska, Guam, and Hawaii) and dollar limitations referenced to section 207(c)(3) of the National Housing Act of 1934, as amended, for multifamily-dwelling loans; it also removed the 20-percent-of-assets exception for the portion of loans in excess of these amounts. The Board therefore has eliminated all dollar restrictions on loans, including low-downpayment loans and home-improvement loans, except with respect to its loans-to-one borrower limitation and affiliated-person loan limitations, found in Part 563 of the Regulations for the Federal Savings and Loan Insurance Corporation (12 CFR Part 563). With respect to the Board's loan-to-one-borrower regulation, the proposed increase in the minimum dollar amount for new institutions, from $100,000 to $200,000, has been modified to index the latter figure to cost-of-living adjustments.

As a related matter, the Board also has rescinded 12 CFR 525.13 of the Regulations of the Federal Home Loan Bank System, which limited the dollar amount of home mortgages eligible as collateral for Bank advances. That provision implemented section 10(b)(2) of the Federal Home Loan Bank Act of 1932, which refers to the now-rescinded dollar limitations on home loan amounts in section 5(c) of the Home Owners' Loan Act.

Home Loans (1-to-4-Family Dwellings)

1. Loan-to-value ratios

The previous section 5(c) did not contain statutory references to loan-to-value ratios for real estate loans; the statute as revised uses 90 percent of value as a reference point for residential real estate loans that will not require the extra security of mortgage insurance. The Board therefore has adopted as proposed a liberalization of its residential lending regulations recognizing 90-percent loans rather than 80-percent loans as the basic home finance benchmark, and limiting regulatory restrictions previously applied to home loans between 80 and 90 percent to those in excess of 90 percent, with one exception relating to loans for condominium and co-operative conversions. Because of general concerns expressed on this subject, the Board has determined at this time to retain the requirement, but apply it only to co-op and condominium conversion loans, that loans in excess of 80 percent of value may be made only to borrowers who intend to occupy the property as a principal residence.

2. Loans to facilitate trade-ins

The Board's proposal had provided that loans to facilitate a trade-in or exchange of property, which have a maximum 18-month term, be maintained at the 80 percent loan-to-value ratio, and that such loans be restricted to five percent of an association's assets. In adopting final regulations, the Board has determined to conform these loans to the 90-percent benchmark, and to remove the asset limitation as artificial and unnecessary. The proposal also contained parenthetical regulatory language referring to the inclusion in this provision of "bridge loans" to individuals and brokers, because current regulatory language did not appear to permit such loans. The provision as adopted, however, clearly authorizes all facilitating loans without restrictions regarding borrowers, and inclusion of the proposed parenthetical is unnecessary.

3. Maximum term

In recognition of recent rapid increases in housing costs, and as an expression of its desire to assist potential borrowers in meeting associations' eligibility requirements regarding loan repayments, the Board proposed to allow associations to make home loans with maximum terms of 40 years. A number of commenters opposed this liberalization, arguing that the decrease in monthly payments would be slight while the total increase in interest payments over a 40-year term would be substantial. The Board recognizes these concerns but believes that a maximum 40-year term should be authorized for those borrowers, especially first-time homebuyers, who would be helped by even a modest decrease in their monthly costs, and notes that average mortgage maturity statistics indicate that few mortgages would be held for a 40-year term. Having determined at this time to authorize the 40-year maximum term, however, the Board intends to ascertain the frequency of its use, and encourages associations offering 40-year mortgages to disclose to borrowers the financial

consequences inherent in the longer amortization schedule.

4. Private mortgage insurance requirement

The Board's regulations have long required that loans in excess of 90 percent of the value of the security property have private mortgage insurance ("PMI") coverage down to 80 percent of value until the loan principal is reduced to 90 percent, at which time the PMI coverage is no longer mandatory. This provision was adopted on the grounds that loans in excess of 90 percent of value are statistically riskier investments for associations and require additional protection during their early years.

The proposal would have reduced the required depth of PMI coverage to the statutory minimum, i.e. the amount of loan principal in excess of 90 percent of value. A number of commenters urged the Board to retain the current rule, citing increased risks related to higher dollar loans, longer terms and adjustable interest rates, as well as the negative impact of inflation on the borrower's ability to carry mortgage payments and other housing-related costs. Upon reconsideration, the Board has determined at present not to reduce its current PMI requirements.

5. Pledged-account loans

The Board's regulations authorize home loans made in excess of maximum loan-to-value ratios where the excess loan amount is secured by pledged savings accounts. With regard to loans in excess of 80 percent of value, certain restrictions apply. The Board has determined to conform this provision with its new home-loan benchmark by applying the restrictions only to loans in excess of 90 percent, and to exclude amounts covered by the pledged account from calculation of the loan amount required to be covered by mortgage insurance. In addition, the Board notes the confusion that has arisen in the past few years regarding a provision in this section requiring these loans to comply with the Board's graduated-payment-mortgage regulations, and has deleted that requirement.

In response to inquiry by commenters, the Board notes that the savings account is not required to be on deposit with the lender association, so long as it is pledged to the association.

6. Nonamortized loans

The proposal provided for a liberalization of the maximum loan term on nonamortized home loans from three to five years; the maximum loan-to-value ratio remained unchanged at 60 percent. Some commenters recommended to the Board that 80% nonamortized loans be authorized. A few commenters also suggested that the Board allow partially-amortized home loans with long terms; present regulations limit these to multifamily-dwelling and commercial loans.

The Board recognizes that such balloon-payment loans with lower initial monthly payments could serve as a vehicle to qualify more potential homebuyers. The Board is concerned, however, with the risk possibilities for home borrowers and associations in the event that refinancing is unavailable at the time the loan becomes due; that is why the Board has included guaranteed refinancing and other consumer and lender protections in its authorized mortgage plans that provide for fluctuating payments. The Board will continue to carefully study this area, but has determined at the present time not to authorize nonamortized or partially-amortized balloon-payment home loans as a permanent-financing option.

The Board has determined, however, to liberalize its current regulations pertaining to flexible-payment loans, which authorize an initial period of interest-only payments and full amortization over the remaining mortgage term. The flexible-payment loan, which is authorized to be made to borrowers intending to occupy the security property, may now be made on one-to-four-family dwellings rather than single-family dwellings only, and may use the Board's adjustable rate mortgage plans (12 CFR 545.6-4 and 545.6-4a). In addition, the five-percent-of-assets limitation has been removed.

Multifamily Dwelling Loans

The Board has adopted as proposed a 90-percent loan-to-value ratio for these loans, which have 30-year maximum terms. The maximum loan-to-value ratio on nonamortized loans has been raised from 60 percent to 75 percent, in conformance with national bank limitations, and the maximum term on nonamortized loans has been increased from three to five years. Two provisions in the current regulations that were not specifically mentioned in the proposed amendment, relating to semi-annual interest payments and partially-amortized loans, have been re-instated.

It is noted that 12 CFR 545.6-10 ("Housing facilities for the aging") has been deleted from the Board's regulations, as it is no longer needed to confer high-ratio lending authority for this type of multifamily housing. The definition of "other dwelling unit" has therefore been expanded to include nursing homes and convalescent homes.

Other Improved Real Estate—Residential

The revisions to the Board's acquisition, development, building lot and site, and construction loan regulations have been adopted substantially as proposed. Many commenters argued against the new, more restrictive loan-to-value ratios established for these investments; as noted in the preamble to the proposal, the restrictions are statutory.

Several commenters disapproved of continuation of a separate loans-to-one-borrower limitation for these loans that is more restrictive than the Board's general rule set out at 12 CFR 563.9-3 of the Insurance Regulations. The Board has determined to retain the separate limitation for development loans based on the relative risk of this type of lending, including the possibility that an association would have to expend additional funds to prepare a foreclosed development property for resale.

The proposal liberalized associations' authority to make building lot and site loans to borrowers who intend to use the property in the future as a principal dwelling. As proposed, the Board has expanded the maximum loan term from five to 15 years. In response to a number of comments, the Board also recognized that the current 40-percent amortization requirement is quite onerous to home borrowers during periods of high interest rates, and has therefore reduced this requirement to 30 percent.

A number of commenters urged the Board to lengthen the term of construction loans, both on projects and individual single-family-dwelling structures. The Board notes that the maximum three-year project construction loan term may be extended up to three additional years; the Board has determined, however, to allow a six-month extension of the 18-month maximum term on construction of individual single-family-dwelling structures.

Current provisions requiring semi-annual interest payments, that were not specifically mentioned in the proposed amendments, have been re-instated.

Rehabilitation Loans

Rehabilitation loans are made on the security of property that already contains an existing structure or structures. These loans are therefore not within the new statutory loan-to-value restrictions pertaining to loans on the security of property containing offsite improvements or in a construction phase. The Board's regulations

accordingly allow these loans to be made under the loan-to-value ratios set out in § 545.6–2 (a) and (b). Under the first provision of the "combination loan" paragraph, rehabilitation loans may be combined with permanent financing loans.

Combination Loans

The Board has adopted, substantially as proposed, the provisions for combination of various types of interim and permanent financing loans.

Some commenters requested that the Board liberalize or remove the proposed amortization requirements for combination loans pertaining to different stages of development and construction; the Board has clarified the language of this provision to provide that the required repayments start three years after the initial disbursement of construction loan proceeds, and notes that the amortization schedule, while slightly more rapid than the current schedule, begins after three years rather than at the end of 18 months as has been required.

A new provision has been added to this regulation, which limits combination loans for construction inclusive of acquisition and/or development to a term of eight years with a three-year extension; the current maximum is a six-year term with two one-year extensions. The Board believes that the new limitation provides a very adequate time period for borrowers to complete projects.

Home Improvement Loans

The Board has liberalized its home improvement loan provision as proposed, by eliminating geographic restrictions, dollar limits, and percentage-of-assets investment limitations. In addition, the Board has provided for interest-rate and payment-adjustment authority for loans in compliance with 12 CFR 545.6–4 and 545.6–4a.

Leeway Authority

The provisions for unsecured construction loans and nonconforming secured loans have been amended to more closely follow the statutory authority. As noted in the preamble to the proposal, these provisions may be used by associations to invest in adjustable-rate mortgages not otherwise authorized under the Board's regulations. The term "residential real property," used only in the construction-loan leeway authority and proposed as a new definition section, proved confusing to commenters and has been deleted in favor of the term "residential real estate."

Commercial Real Estate Loans

The Board has adopted as proposed a 90-percent loan-to-value ratio and 30-year maximum term for commercial loans, and has, in addition, raised the loan-to-value ratio from 60 percent to 75 percent for nonamortized loans, in conformance with national bank lending authority. References to the inclusion in this section of construction loan and partially-amortized loan authority, which were not explicitly stated in the proposal, have been added.

The statute continues to require first-lien status for loan security under this section. The Board has therefore included a paragraph containing the first-lien definition formerly found in Part 541.

Collateral Loans

The proposal provided that an association could make a collateral loan if it were authorized to invest in the underlying assigned loan(s). As drafted, the provision might have been interpreted to mean, for example, that an association could invest up to half of its assets in loans secured by property with regard to which it was statutorily limited to a five-percent-of-assets investment. The provision has therefore been clarified to provide that collateral loans may be made to the extent that the underlying loans could be made directly.

Location of Security Property

The revised statute does not restrict associations in their ability to invest in loans outside their local areas; the Board therefore has adopted as proposed the elimination of geographic limitations on real estate loans. In order to give parity to insured institutions in relation to the new rules for Federals, the Board additionally has lifted the current geographic limitations on location of security property in the Insurance Regulations.

Notwithstanding these changes, the Board will continue to evaluate associations' efforts under the Community Reinvestment Act in satisfying the continuing and affirmative obligation to help meet the credit needs of their local communities, including low- and moderate-income neighborhoods.

A number of commenters urged the Board to retain its local eligible servicer requirements for out-of-area loans. The Board, however, has determined at this time to delete servicer requirements because it believes that association managements will continue to secure sound servicing arrangements for their distant loans, and because the servicer regulations unnecessarily hamper those associations that wish to do their own servicing.

Mobile Home Loans

Although mobile home loans are not real-estate loans and thus were not within the scope of the proposal, several commenters took the opportunity to request liberalizations to this set of regulations. Because the Board desires to make the mobile-home lending structure more similar to that of other residentially-related loans, the Board has determined to amend its mobile home loan regulations in certain respects to reflect changes in its real-estate regulations. Specifically, geographic-area prohibitions and seller-servicer requirements have been eliminated and the loans may be made using adjustable-rate mortgage plans authorized under 12 CFR 545.6–4 or 545.6–4a.

Conforming and Corrective Amendments

A number of existing regulations were slightly modified to reflect the new lending authority, including amendments to § 545.6–10 ("Community development loans and investment") and § 545.6–1.3 ("Farmers Home Administration Rural Housing Program guaranteed loans"). In addition, this opportunity was taken to correct an inadvertent omission in § 545.6–9 ("Loans on low-rent housing") to facilitate turn-key projects by eliminating the appraisal requirement on projects to be purchased by a local public housing authority.

The Board finds that a 30-day delay of effective date pursuant to 12 CFR 508.14 and 5 U.S.C 553(d) is unnecessary, as the amendments implement statutory revisions and relieve current regulatory restrictions.

Accordingly, the Federal Home Loan Bank Board hereby amends Part 525, Subchapter B, Parts 541 and 545, Subchapter C and Parts 561 and 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 525—ADVANCES

1. Delete § 525.13 as follows:

§ 525.13 Home Mortgages exceeding $75,000.

[Rescinded effective November 17, 1980.]

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 541—DEFINITIONS

2. Amend Part 541 by amending §§ 541.12, 541.14(a), 541.16 by adding paragraph (c), and 541.17(a) and (b), deleting § 541.23, and adding new § 541.25, to read as follows:

§ 541.12 Improved real estate.

Any of the real estate defined in §§ 541.3, 541.4, 541.5, 541.11, 541.16, or 541.17(b).

§ 541.14 Loans secured by liens on real estate.

(a) Loans secured by an interest in real estate in fee or in a leasehold or subleasehold extending or renewable automatically at the option of the holder or the Federal association for 5 years after maturity of the loan, if, in the event of default, the real estate interest could be used to satisfy the obligation with the same priority as a mortgage or a deed of trust in the jurisdiction where the real estate is located; and

* * * * *

§ 541.16 Other dwelling unit.

Real estate which comprises:

* * * * *

(b) * * * or (c) A structure(s) or parts thereof, designed or used for a nursing home or convalescent home.

§ 541.17 Other improved real estate.

(a) Commercial real estate containing (1) a permanent structure(s) constituting at least 25 percent of its value, or (2) improvements which make it usable by a business or industrial enterprise.

(b) Real estate containing offsite or other improvements, completed according to governmental requirements and general practice in the community, sufficient to make the property ready for primarily residential construction, and real estate in the process of being improved by a building or buildings to be constructed or in the process of construction for primarily residential use.

* * * * *

§ 541.23 Two-, three- or four-family dwelling.

[Rescinded effective November 17, 1980.]

§ 541.25 Unimproved real estate.

Real estate which will become improved real estate as defined in § 541.12 of this Part.

PART 545—OPERATIONS

3. Revise §§ 545.6, 545.6-1, and 545.6-2, by substituting new texts to read as follows:

§ 545.6 Real estate loans.

(a) *General.* A real estate loan is any loan secured by real estate where the association relies substantially upon that real estate as the primary security for the loan. A Federal association may invest in, sell, purchase, participate or otherwise deal in real estate loans or interests therein, only as provided in this Part.

(b) *Determination of loan-to-value ratios.*

(1) In determining compliance with maximum loan-to-value limitations in this Part, at the time of making a loan an association shall add together the unpaid amount of all recorded loans secured by prior mortgages, liens or other encumbrances on the security property that would take precedence over the association's loan, and shall not make such a loan unless the total amount of such loans (including the one to be made but excluding loans that will be paid off out of the proceeds of the new loan) does not exceed applicable maximum loan-to-value limitations prescribed in this Part, as indicated by documentation retained in the loan file.

(2) In valuing the real estate security, an association shall use the current appraised value of the security property, which may include any expected value of improvements to be financed. "Value" for a real estate loan means market value.

(c) *Purchase of loans from the Federal Savings and Loan Insurance Corporation.* An association may purchase from the Federal Savings and Loan Insurance Corporation any real-estate-related loan guaranteed by the Corporation under a guarantee contract made by the Corporation with the purchasing association.

§ 545.6-1 Insured and guaranteed residential real estate loans.

(a) Notwithstanding any other provision of this Part, loans that are insured or guaranteed by a public mortgage insurer may be made in amounts and with terms and conditions of repayment acceptable to the insuring or guaranteeing agency.

(b) A loan is insured or guaranteed by a public mortgage insurer if:

(1) It comes within the definitions of §§ 541.10 or 541.13 of this Subchapter, or within the provisions of Title X of the National Housing Act; or

(2) It is insured or guaranteed by an agency or instrumentality of a state (i) whose full faith and credit is pledged to support the insurance or guarantee, or (ii) whose insurance or guarantee program is approved by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

§ 545.6-2 Other residential real estate loans.

(a) *Home loans.*—(1) *General requirements.* Loans on the security of homes or combinations of homes and business property, repayable in regular monthly payments sufficient to liquidate the debt, principal and interest, within the loan term, shall not exceed 90 percent of the value of the security property and shall be repayable within 40 years. Except as otherwise specifically authorized in this Part, after the first payment on a loan described under this paragraph (a) that is secured by property occupied or to be occupied by the borrower, no subsequent required payment shall be greater than any preceding payment. Loans in excess of 80 percent of value made on the security of condominium or cooperative dwellings that are in the process of conversion from rental units, or such loans made in connection with such a conversion, shall be subject to the restriction of paragraph (a)(2)(ii) of this section.

(2) *Ninety-five percent loan-to-value authorization.* The loan-to-value limitation in paragraph (a)(1) of this section shall be 95 percent, if:

(i) The loan contract requires that, in addition to principal and interest payments on the loan, one-twelfth of estimated annual taxes and assessments on the security property be paid monthly in advance to the association;

(ii) The borrower, including a purchaser who assumes the loan, has executed a certificate stating that the borrower occupies, or in good faith intends to occupy, the property (or one dwelling on the property) as the borrower's principal residence; and

(iii) As long as the unpaid balance of the loan exceeds 90 percent of the value of the security property, determined at the time the loan was made, the part of such balance exceeding 80 percent of value is guaranteed or insured by a mortgage insurance company which the Federal Home Loan Mortgage Corporation has determined to be a "qualified private insurer": *provided,* however, that any unpaid loan balance secured by a pledged savings account shall not be required to be guaranteed or insured under this provision.

(3) *Non-monthly-installment loans.* The term-of-years limitation shall be 15 years on loans made with interest payable less frequently than monthly

but at least semi-annually and principal payable less frequently than monthly but at least annually in installments sufficient to retire the debt, both interest and principal, within the loan term, and 40 years on loans made on farm residences or combinations of farm residences and commercial farm real estate with principal and interest payable less frequently than monthly but at least annually in installments sufficient to retire the debt, both interest and principal, within the loan term.

(4) *Loans without full amortization.* (i) *General rule.* Nonamortized loans (loans on which no principal payments are made until the end of the term) and loans that are not fully amortized shall not exceed 60 percent of value and shall be repayable within 5 years, with interest payable at least semiannually.

(ii) *Loans to facilitate trade-in or exchange.* Loans made to facilitate the trade-in or exchange of security property shall not exceed 90 percent of value and shall be repayable within 18 months, with interest payable at least semiannually.

(iii) *Flexible payment loans.* A loan that is secured by property occupied or to be occupied by the borrower may provide for an initial period, not exceeding five years, during which required monthly installment payments shall equal not less than one-twelfth the annual interest rate times the unpaid balance of the loan, and a subsequent period during which required monthly installment payments shall be sufficient to liquidate the debt, both principal and interest, within the loan term. The limitation contained in the last sentence of subparagraph (a)(1) pertaining to maximum payments shall apply separately to the initial period and subsequent period of a flexible payment loan, except to the extent that the loan complies with one of the mortgage plans authorized under §§ 545.6–4 ("Alternative mortgage instruments") or 545.6–4a ("Renegotiable rate mortgages") of this Part. If a flexible payment loan provides for fixed monthly payments in the initial and/or subsequent period(s), the payment schedule must be set forth in the loan contract.

(5) *Pledged account loans.* Loans made on the combined security of real estate and savings accounts may be made in excess of the maximum loan-to-value ratios specified in this paragraph (a), with such excess secured by savings accounts: *provided,* that loans made under subparagraph (a)(2) are subject to the following restrictions:

(i) The loan shall not exceed the appraised value of the real estate;

(ii) The savings account shall consist only of funds belonging to the borrower, members of his family, or his employer; and

(iii) The association shall fully disclose to the prospective borrower the differences (including interest, private-mortgage-insurance costs, and equity interest) between a loan secured by real estate and savings and a loan secured by real estate alone.

(6) *Loans on cooperatives.* Such loans may be made under this paragraph (a), subject to the following requirements:

(i) *Loans on the security of cooperative housing developments ("blanket" loans).* The association shall require that the cooperative housing development maintain reserves at least equal to those required for comparable developments insured by the Federal Housing Administration.

(ii) *Loans on individual cooperative units.* Such loans may be made on the security of (*a*) a security interest in stock, membership certificate, or other evidence of ownership issued to a stockholder or member by a cooperative housing organization; and (*b*) an assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(7) See §§ 545.6–4 and 545.6–4a of this Part for other mortgage plans which may be used for loans authorized under this paragraph (a).

(b) *Multifamily dwelling loans.* Loans on the security of other dwelling units, combinations of dwelling units, including homes, and business property involving only minor or incidental business use, shall not exceed 90 percent of the value of the security property and shall be repayable within 30 years, with interest payable at least semi-annually: *provided,* that loans which are not fully amortized shall not exceed 75 percent of value and shall be repayable within 5 years for non-amortized loans, and with principal and interest payments sufficient to meet a 30-year amortization schedule for partially-amortized loans.

(c) *Loans on unimproved real estate ("acquisition" loans).* Loans on the security of unimproved real estate as defined in § 541.25 of this Subchapter shall not exceed 66⅔ percent of the value of the security property, and shall be repayable in 3 years with interest payable at least semi-annually.

(d) *Development loans.* (1) Loans to finance development of land shall not exceed 75 percent of the value of the security property and shall be repayable within 5 years, with interest payable at least semi-annually. The loan documentation shall contain a preliminary development plan that is satisfactory to the association.

(2) Upon release of any portion of the security property from the lien securing the loan, the principal balance of the loan shall be reduced by an amount at least equal to that portion of the outstanding loan balance attributable to the value of the property to be released. "Value" for the purposes of the preceding sentence is the value fixed at the time the loan was made.

(3) An association may extend the time for payment for an additional period not in excess of 3 years, but no extension may be made unless (i) interest on the loan is current, (ii) the association's board has before it a current appraisal of the security property, and (iii) the outstanding principal balance of the loan is or has been reduced to an amount not over 75 percent of the current value of the security property.

(4) The limitation on loans to one borrower as defined in § 569.9–3 of this Chapter shall be 2 percent of an association's assets with regard to loans on any one development project made under this paragraph (d). A development project includes all primarily residential, recreational, or other facilities in an integrated development plan.

(e) *Loans on building lots and sites.* Loans on the security of building lots and sites ("other improved real estate" as defined in § 541.17(b)) shall comply with the following requirements:

(1) Single-family-dwelling loans for a borrower's principal residence (as evidenced by a borrower's certification of intention, at the time the loan is made, that the property will be so used) shall not exceed 75 percent of the value of the security property and shall be repayable within 15 years, with interest payable at least semi-annually. The loan contract shall provide for monthly payments of principal and interest sufficient to amortize at least 30 percent of the original principal amount before the end of the loan term.

(2) Loans other than for a borrower's principal residence shall not exceed 75 percent of the value of the security property and shall be repayable within 3 years, with semi-annual interest payments beginning not more than 1 year after the initial disbursement.

(3) The provisions of paragraphs (d) (2) and (3) shall apply to this paragraph (e).

(f) *Construction loans.* (1) Construction loans on other improved real estate (as defined in § 541.17(b)) shall not exceed 75 percent of the value of the security property and shall be repayable in 3 years, with interest payable at least semi-annually, except

that for construction of single family dwellings, loans on individual structures shall be repayable within 18 months of initial disbursement of applicable loan funds.

(2) Associations shall reserve the right to impose limits on the number of structures under construction at a given time.

(3) The provisions of paragraphs (d) (2) and (3) shall apply to this paragraph (f), except that loan extensions for construction of individual single-family-dwelling structures are limited to 6 months.

(g) *Rehabilitation loans.* Loans to finance substantial alteration, repair or improvement of primarily residential property may be made within the maximum loan-to-value ratios permitted for loans under paragraphs (a) and (b) of this section and shall be repayable within 3 years (18 months for a single family dwelling), with interest payable at least semi-annually.

(h) *Combination loans.* (1) Any loans authorized by this § 545.6-2 may be combined, with the term of each loan beginning at the end of the term of the preceding loan and interest and principal payment requirements as specified in the applicable paragraphs of this section.

(2) Loans made on unimproved real estate (as defined in § 541.25 of this Part), development loans, and loans on other improved real estate (as defined in § 541.17(b)) which are combined with permanent financing loans, or are made to borrowers who have secured permanent financing from other lenders, may be made within the maximum loan-to-value ratios permitted for loans under paragraphs (a) and (b) of this section: *Provided,* that disbursement of loan proceeds in excess of 80 percent of the value of the security property shall not be made until substantial completion of construction.

(3) With respect to a combination of loans to finance development and loans on building lots and sites and/or construction loans, whether or not development has been completed, (i) beginning not more than 3 years after the initial disbursement of loan proceeds for construction purposes, the principal shall be amortized monthly at a rate of at least 1½ percent of that portion of the loan balance applicable to any home, including the building site, and (ii) beginning not more than 4 years after such disbursement, principal shall be amortized monthly at a rate of at least 1½ percent of that portion of the loan balance not applicable to the construction of any home and its building site.

(4) Notwithstanding any other provisions of this § 545.6-2, a combination loan for construction inclusive of acquisition and/or development shall be repayable within 8 years, but such loan may be extended for an additional period not exceeding 3 years.

(i) See § 545.6-5 of this Part for residential loan leeway authority.

4. Delete § 545.6-2a, and revise § 545.6-3 by substituting a new text to read as follows:

§ 545.6-2a Loans on cooperatives.

[Rescinded effective November 17, 1980.]

§ 545.6-3 Home improvement loans.

An association may invest in loans, with or without security, for residential real property alteration, repair or improvement, or for equipping or furnishing residential real property, with installments payable at least quarterly, the first installment due no later than 120 days from the date the loan is made and the final installment due no later than 20 years and 32 days from such date. Installments shall be substantially equal except to the extent that the loan complies with one of the mortgage plans authorized under §§ 545.6-4 or 545.6-4a of this Part.

§ 545.6-4 [Amended].

5. Amend §545.6-4(b) by deleting the phrase "under § 541.9 of this subchapter " in subparagraph (4), and changing the reference from § 545.6-1(a) to § 545.6-2(a) in subparagraph (5) thereof.

§ 545.6-4a [Amended].

6. Amend § 545.6-4a by deleting the phrase "of up to 30 years" in paragraph (b) thereof.

7. Revise §§ 545.6-5 and 545.6-6 by substituting new texts to read as follows:

§ 545.6-5 Leeway authority for loans relating to residential real estate and farms.

(a) *Loans without requirement of security for construction purposes.* In addition to loans in which it may invest under other provisions of this Part, an association may invest an amount not exceeding the greater of its surplus, undivided profits, and reserves or 5 percent of its assets in loans the principal purpose of which is to provide financing with respect to what is or is expected to become primarily residential real estate where the association relies substantially for repayment on: (1) the borrower's general credit standing and forecast of income, with or without other security, or (2) other assurances of repayment, including but not limited to a third-party guaranty or similar obligation.

(b) *Nonconforming secured loans.* In addition to loans in which it may invest under other provisions of this Part, an association may invest an amount not exceeding 5 percent of its assets in loans, advances of credit, and interests therein, secured by residential real estate or real estate used or to be used for commercial farming, which are not otherwise authorized under this Part.

§ 545.6-6 Commercial real estate loans.

(a) Loans (including construction loans) secured by first liens on other improved real estate, as defined in § 541.17(a) and (c) of this Subchapter, shall not exceed 90 percent of the value of the security property, and shall be repayable within 30 years, with interest payable at least semi-annually: *Provided,* that construction loans and nonamortized loans shall not exceed 75 percent of value and shall be repayable within 5 years, and partially-amortized loans shall be repayable with principal and interest payments sufficient to meet a 30-year amortization schedule.

(b) An association's aggregate investment under this section shall not exceed 20 percent of assets.

(c) A loan is considered to be secured by a first lien under this section if it is (i) secured by an interest in real estate in fee or in a leasehold or subleasehold extending or renewable automatically or at the option of the holder or the association for 5 years after maturity of the loan, if, in the event of default, the real estate could be used to satisfy the obligation with the same priority as a first mortgage or first deed of trust in the jurisdiction where the real estate is located; or (ii) secured by an assignment of such loan(s).

(d) See § 545.6-5 for additional authority to invest in commercial farming loans and § 545.6-10 for additional authority to invest in community development loans.

8. Delete §§ 545.6-7, 545.6-8, and 545.6-12, amend paragraph (a) of § 545.6-9, and revise §545.6-10 and paragraph (a) of § 545.6-13, to read as follows:

§ 545.6-7 Insured loans to finance land development.

[Rescinded effective November 17, 1980]

§ 545.6-8 Housing facilities for the aging.

[Rescinded effective November 17, 1980]

§ 545.6-9 Loans on low-rent housing.

(a) *General.* Limitations in this Part relating to maximum loan terms and loan-to-value ratios, except limitations in § 545.6-8, shall not apply to any loan secured by a first lien on real estate which is, or is being constructed, remodeled, rehabilitated, or renovated to be, the subject of (1) an annual contributions contract for low-rent housing under former Sections 23 or 5 of the United States Housing Act of 1937, as amended, or (2) a Housing Assistance Payment (HAP) contract for low-income housing under Section 8 of the United States Housing Act of 1937, as amended, which the mortgagor has agreed in writing to enter into for the maximum term available for the particular project type and financing: *Provided,* no such loan by a Federal association shall exceed 90 percent of the appraised value of the security property or, in lieu of such appraisal, 90 percent of the purchase price if the security property is to be purchased by a local public housing authority, and in no event shall loan proceeds in excess of 80 percent of such appraised value be disbursed to the borrower until the Department of Housing and Urban Development has issued its final approval of the project under the subsidy program. Loans insured under the National Housing Act may be made on terms and conditions permitted by the insuring agency as provided in § 545.6-1 of this Part.

* * * * *

§ 545.6-10 Community development loans and investments.

(a) *General.* A Federal association may invest in real property, or in interests in real property, located within any of the following areas, and in loans on the security of liens, and in other obligations secured by liens, on real property so located:

(1) Any neighborhood strategy area (as defined in 24 CFR 570.301(c)) receiving concentrated development assistance under Title I of the Housing and Community Development Act of 1974, as amended;

(2) Any general location (as specified in 24 CFR 570.306(b)(3)(ii)) which is specified in a community's Housing Assistance Plan (as defined in 24 CFR 570.306) as an area for housing assistance goals and which is receiving such concentrated assistance;

(3) Any urban renewal area (as defined in section 110(a) of the Housing Act of 1949, as amended) receiving such concentrated assistance in order to finish uncompleted urban renewal projects; and

(4) Any locales specified by a community as receiving Urban Development Action Grants or otherwise receiving significant amounts of such concentrated assistance.

(b) *Investment in loans and other obligations secured by liens on real estate.* Such investments shall conform to all limitations in this Part 545 applicable to the type of real estate securing the investments.

(c) *Investments in real estate.* An association may invest up to 2 percent of assets in real property or interests therein described in paragraph (a). Investments may not exceed the appraised value of the property plus usual settlement costs. In determining the 2-percent investment limit, the following rules shall apply:

(1) A reasonable allowance for depreciation computed under the straight-line method may be deducted from the cost of improved real property or investments in improved real property owned by the association;

(2) If a leasehold interest in land is acquired, the amount of the investment as to rental obligations under the lease shall be determined on the basis of the "present value of an annuity due" and for the purpose of such determination, the worth of money shall be deemed to be 10 percent; and

(3) The investment in improvements to land in which the association has a leasehold interest shall be the cost to the association of the improvement, less reasonable allowance for amortization computed under the straight-line method.

(d) Total investment under this section shall not exceed 5 percent of assets.

§ 545.6-12 Nonconforming secured loans and loans without requirement of security.

[Rescinded effective November 17, 1980.]

§ 545.6-13 Farmers Home Administration Rural Housing Program guaranteed loans.

(a) *General.* An association may invest in loans on residential real estate guaranteed under the Farmers Home Administration (FmHA) Rural Housing Program, without regard to other provisions in this Part.

* * * * *

9. Delete §§ 545.7-7 and 545.7-8 and revise § 545.7-6 (a)(2), (b), introductory text of (d), (d)(1), (e)(1), (e)(2) (ii) and (iii), adding a new (e)(3) and (f) to read as follows:

§ 545.7-6 Mobile home financing.

(a) *Definitions used in this section.*

* * * * *

(2) "Mobile home chattel paper"—a document evidencing a loan or interest in a loan secured by a lien on one or more mobile homes and equipment installed or to be installed therein.

* * * * *

(b) *General investment authority.* An association may invest up to 20 percent of assets in mobile home chattel paper and interests therein.

* * * * *

(d) *Inventory financing.* An association may invest in mobile home chattel paper which finances a mobile home dealer's acquisition of inventory, if:

(1) The inventory is held for sale by the dealer in its ordinary course of business;

* * * * *

(e) *Retail financing.* (1) *Insured and guaranteed loans.* An association may invest in retail mobile home chattel paper that is insured or guaranteed, as defined in §§ 541.10 or 541.13 of this Subchapter, or that has a commitment for such insurance or guarantee.

* * * * *

(2) *Conventional loans.*

* * * * *

(ii) the mobile home is or will be located at a mobile home park or other permanent or semi-permanent site;

(iii) the loan is payable within 20 years, in monthly payments which are substantially equal except to the extent that the loan complies with one of the mortgage plans authorized under §§ 545.6-4 or 545.6-4a of this Part; and

* * * * *

(3) *Purchase of retail paper.* With regard to purchase of an interest in retail mobile home chattel paper where the security property is or will be located outside the association's normal lending territory (as defined in § 561.22), the seller of the interest shall be an institution whose accounts or deposits are insured by a Federal agency or a service corporation thereof and the seller (unless the seller is the association's service corporation) shall retain at least a 25 percent interest in each document evidencing a loan secured by the chattel paper.

(f) *Sale of paper.*

(1) All mobile home chattel paper sold by an association shall be sold without recourse, as defined in § 561.8 of this Chapter.

(2) No association may sell mobile home chattel paper if, at the close of its most recent semi-annual period, it has mobile-home-chattel-paper scheduled items (other than assets acquired in a supervisory merger) in excess of 5 percent of its total portfolio in such paper: *provided,* that application may be made to the Board for a waiver of this restriction.

§ 545.7-7 Purchase of participation interests in mobile home chattel paper.

[Rescinded effective November 17, 1980]

§ 545.7-8 Sale of mobile home chattel paper.

[Rescinded effective November 17, 1980]

10. Revise § 545.7-9, to read as follows:

§ 545.7-9 Collateral loans.

An association may make a collateral loan (secured by assignment of secured loans) to the extent that it could, under applicable law and regulations, make or purchase the underlying assigned loan(s).

11. Delete §§ 545.8, 545.8-1, 545.8-6, and 545.8-7, and amend the title of § 545.8-3, as follows:

§ 545.8 Participations.

[Rescinded effective November 17, 1980]

§ 545.8-1 Purchase of loans.

[Rescinded effective November 17, 1980]

§ 545.8-3 Contract provisions for real estate loans.

§ 545.8-6 Lending area.

[Rescinded effective November 17, 1980]

§ 545.8-7 Percentage limitation on real estate loan investments.

[Rescinded effective November 17, 1980]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

11a. Amend § 561.22 by revising paragraph (a), deleting paragraph (b), and redesignating paragraph (c) as paragraph (b), as follows:

§ 561.22 Normal lending territory.

(a) Normal lending territory is the area (1) within the State in which such institution's principal office is located; (2) within any portion of a circle with a radius of 100 miles from the principal office which is outside of such State; and (3) other territory in which the institution was operating on June 27, 1934.

(b) *Definitions.* * * *

PART 563—OPERATIONS

12. Revise § 563.9 to read as follows:

§ 563.9 Nationwide lending.

(a) An insured institution may invest in, sell, purchase, participate or otherwise deal in loans or interests therein on security property located outside its normal lending territory but within the United States or its territories and possessions.

(b) An institution investing in a nationwide loan shall obtain a signed report of appraisal of the real estate security for the loan, prepared by an appraiser having no interest, direct or indirect, in that security or in any loan on that security and whose compensation is not affected by the approval or declining of the loan.

13. Delete §§ 563.9-1 and 563.9-2, as follows:

§ 563.9-1 Participation loans.

[Rescinded effective *November 17, 1980.]*

§ 563.9-2 Sales of interest in loans on real estate located outside normal lending territory.

[Rescinded November 17, 1980]

14. Amend paragraph (b) of § 563.9-3 by deleting the proviso and substituting therefor the following language:

§ 563.9-3 [Amended].

* * * * *

(b) * * * *Provided,* that, notwithstanding any other limitation of this sentence, any such loan may be made if the loan is secured by a lien on low-rent housing, or if the sum of subparagraphs (1) and (2) of this paragraph (b) does not exceed $200,000 and, beginning on January 1, 1982, and annually thereafter, such amount adjusted by the dollar amount that reflects the percentage increase, if any, in the Consumer Price Index during the previous 12 months as shown in the November-to-November index.

15. Revise § 563.9-7, to read as follows:

§ 563.9-7 Loans in excess of 90 percent of value.

(a) An insured institution authorized to make loans in excess of 90 percent of value on the security of real estate comprising single-family dwellings or dwelling units for four or fewer families may do so only if such loans comply with § 545.6-1 or § 545.6-2(a)(2)(iii) of this Chapter.

(b) This section does not apply to loans to facilitate the sale of real estate owned as defined in § 561.15(d) of this Subchapter, nor to investment in Farmers Home Administration Rural Housing Program guaranteed loans complying with § 545.6-13 of this Chapter.

16. Delete § 563.10, to read as follows:

§ 563.10 Appraisal requirements.

[Rescinded effective November 17, 1980]

(Sec. 10, 47 Stat. 725 (12 U.S.C. 1421 et seq.) sec. 5, 48 Stat. 132 (12 U.S.C. 1464), as amended by sec. 401, 94 Stat. 160; secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730). Reorg. Plan No. 3 of 1947, 12 FR 4891, 3 CFR, 1943-48 comp., p. 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

FR Doc. 80-36000 Filed 11-17-80; 8:45 am]

BILLING CODE 6720-01-M

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12 CFR Parts 526, 545 and 563

[No. 80-702]

Maturity of Time Deposits

Dated: November 10, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final regulations.

SUMMARY: The Federal Home Loan Bank Board has amended its regulations to reduce the minimum period of maturity on time accounts from thirty to fourteen days. This action parallels a similar change made recently in the regulations applicable to banks, and is intended to give parity to savings and loan associations and to increase funds available for home financing.

EFFECTIVE DATE: November 10, 1980.

FOR FURTHER INFORMATION CONTACT: Michael D. Schley (202-377-6444), Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Section 526.3-1 of the Regulations for the Federal Home Loan Bank System (12 CFR 526.3-1) allows member institutions to offer certificate accounts of $100,000 or more that are not subject to an interest rate ceiling if the account has a term of at least thirty days. Similarly, § 526.3 (c) (12 CFR 526.3(c)) refers to a minimum term of maturity of thirty days for public unit accounts at member institutions. The Federal Home Loan Bank Board has amended the language of these two sections and six other related sections by replacing the thirty-day minimum term with a fourteen day minimum maturity period.

This action by the Board parallels a recent resolution by the Board of Governors of the Federal Reserve System that shortened the maturity period for "time deposits", as defined in Regulation D (45 FR 56009, August 22, 1980; 12 CFR 204.2(c)). The amendment

to Regulation D was intended to "improve the competitive position of domestic depository institutions vis-a-vis open market instruments and foreign banking offices" (45 FR 56013). The Board believes that a similar change in authority is necessary to assist member institutions in obtaining funds for home financing.

The revision of § 526.3–1 specifically exempts certificate accounts of $100,000 or more with a term of at least fourteen days from the interest rate ceilings of § 526.3. The public unit account provision in § 526.3(c) is revised to conform to the new minimum term restriction of fourteen days.

It is noted that a time account with a maturity shorter than one year and a balance of less than $100,000 is a "regular account" as defined in 12 U.S.C. 526.1(d), because a member institution may not currently offer a higher rate of interest than 5½ percent, the same rate applicable to passbook accounts. (*See* the Depository Institutions Deregulation Committee final rule of October 9, 1980, 45 FR 68640, October 16, 1980; 12 CFR 526.3(a)(1), (10)).

The Board finds that observance of the notice and comment period of 12 CFR 508.12 and 5 U.S.C. 553(b) and the 30-day delay of effective date of 12 CFR 508.14 and 5 U.S.C. 553(d) would be contrary to public policy because of the detrimental economic effect on member institutions and savers that would result from delaying the effective date of this resolution.

Accordingly, the Board hereby amends Part 526, Subchapter B, Part 545, Subchapter C, and Part 563, Subchapter D, Chapter V of Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER B—FEDERAL HOME LOAN BANK SYSTEM

PART 526—LIMITATIONS ON RATE OF RETURN

1. Amend paragraph (c) of § 526.3 by substituting the number "14" for the number "30" in the phrase "30 days or more" and replacing an obsolete reference to subparagraph (a)(8) with a reference to 12 CFR 1204.104, to read as follows:

§ 526.3 Maximum rates of return payable by members on savings accounts.

(c) *Exceptions as to terms or qualifying periods.* A member may pay a rate of return not exceeding the highest rate permitted under paragraph (a) of this section on (1) a public unit account that is a certificate account with a maturity of 14 days or more or a notice account, or (2) a certificate account that qualifies as a retirement account under subsection 401(d) or 408(a) of the Internal Revenue Code and has a term of 3 years or, in the case of an account issued under subdivision (a)(4)(ii), 30 months; *provided,* that such accounts issued under subdivision (a)(5)(ii) of this section prior to January 1, 1980, or under subdivision (a)(4)(ii) of this section must meet the maturity requirement, and accounts issued under 12 CFR 1204.104 must meet the minimum amount and maturity requirements, prescribed in those provisions.

2. Revise § 526.3–1 by substituting the number "14" for the number "30", to read as follows (the entire paragraph is set forth below for the benefit of the reader);

§ 526.3–1 Certificate accounts of $100,000 or more.

No maximum rate of return shall apply to a certificate account of $100,000 or more ($50,000 or more if the issuing member's home office is in Puerto Rico) with a term of at least 14 days. (The $50,000 minimum shall apply only if the member does not advertise or promote the account outside Puerto Rico.)

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 545—OPERATIONS

§§ 545.1–1, 545.1–3, and 545.1–4 [Amended]

3. Amend paragraph (f) of § 545.1–1, paragraph (b) of § 545.1–3, and paragraph (c) of § 545.1–4, by substituting the number "14" for the number "30" wherever it appears.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

§§ 563.3–1, 563.3–2, and 563.3–3 [Amended]

4. Amend subparagraph (4) of paragraph (b) of § 563.3–1 and subparagraph (4) of paragraph (b) of § 563.3–2 by substituting the number "14" for the number "30" wherever it appears. Amend subparagraph (1) of paragraph (c) of § 563.3–3 by substituting the number "14" for the word "thirty" wherever it appears.

(Sec. 5B, 12 U.S.C. 1425b, 47 Stat. 725; Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947, 12 FR 4981; 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-36003 Filed 11-17-80; 8.45 am]

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12 CFR Parts 541, 545, 561, 563

[No. 80-701]

Investment in Consumer Loans, Commercial Paper and Corporate Debt Securities

Dated: November 10, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final regulations.

SUMMARY: These regulations implement section 401 of Tile IV of the Depository Institutions Deregulation and Monetary Control Act of 1980, which authorizes Federally-chartered savings and loan associations and mutual savings banks, subject to a 20-percent-of-assets limitation, to make secured or unsecured consumer loans and to invest in, sell, or hold commercial paper and corporate debt securities as defined and approved by the Federal Home Loan Bank Board. These regulations also implement the Federal Financial Institutions Examination Council's recommended "Uniform Policy for Classification of Consumer Instalment Credit Based on Delinquency Status."

EFFECTIVE DATE: November 17, 1980.

FOR FURTHER INFORMATION CONTACT: Ann Hume Loikow, Office of General Counsel, telephone number (202) 377–6448, Federal Home Loan Bank Board, 1700 G Street N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 1980, the Federal Home Loan Bank Board, by Resolution No. 80–468 (45 FR 52177; dated August 6, 1980), proposed regulations to implement a part of section 401 of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("Act"), Pub. L. 96–221, 94 Stat. 132. This section added a new subparagraph (B), which authorizes associations to engage in consumer lending and to invest in, sell, or hold commercial paper and corporate debt securities as defined and approved by the Board, to § 5(c)(2) of the Home Owners Loan Act of 1933 (12 U.S.C. 1464(c)), the category of investments in which Federally-chartered savings and loan associations and mutual savings banks ("associations") may invest up to 20 percent of their assets.

The proposed regulations amended the Rules and Regulations for the Federal Savings and Loan System ("Federal Regulations") to authorize associations to make consumer loans, both directly and indirectly through a dealer, with few limitations, and to invest in commercial paper and corporate debt securities, subject to certain limitations necessary to meet statutory requirements or to help ensure the prudent exercise of this new investment authority. It also amended the Regulations of the Federal Savings and Loan Insurance Corporation ("Insurance Regulations") to implement the Federal Financial Institutions Examination Council's recommended "Uniform Policy for Classification of Consumer Instalment Credit Based on Delinquency Status."

The Board received eighty-five comments from Federal and state-chartered savings and loan associations, mutual savings banks, trade associations, banks, resort community developers, other financial companies, and one public interest group. Most commenters commented favorably on the Board's decision to implement these new investment authorities with a broad regulation that leaves most of the detailed decisions regarding the exercise of these new powers to each institution's management. The bulk of the comments suggesting amendments to the proposal concerned three broad issues: (1) the use of liens on real estate to secure consumer loans; (2) inventory financing and the financing of consumer leasing; and (3) the proposed maturity limitations on investments in corporate debt securities.

Use of Liens on Real Estate To Secure Consumer Loans

Many of those who commented on the proposed regulation wanted to be able to use liens on real estate to secure consumer loans. In the proposal, "consumer loan" was defined as a form of "consumer credit." The latter term includes all those kinds of loans, such as consumer loans, educational loans, unsecured home improvement loans, credit extended in connection with credit cards, and loans in the nature of overdraft protection, which would be subject to the proposed classification system for delinquent consumer instalment credit; however, the term "consumer loan" only included those loans authorized under the new consumer loan provisions of the Act. In order to distinguish between associations' authority to make real estate loans and the new consumer loan authority and to prevent an association's real estate and mobile home loans from being required to be classified under the new loan classification system for delinquent consumer instalment credit, the proposal defined "consumer credit" so as to exclude loans secured by liens on real estate and chattel liens secured by mobile homes. It was thought that all loans secured by homes or real estate should properly fall under the mobile home regulations or the real estate lending regulations.

However, many associations indicated that they wanted to be able to use a lien on real estate to secure a consumer loan without having to go through the substantial documentation required for real estate loans (i.e., appraisals, title searches and insurance, closing). They also wanted more flexibility in payment terms than is allowed under the real estate lending regulations so that they could, for example, make balloon-payment or single-payment consumer loans. Commenters argued that making these loans under the real estate or mobile home lending authority would add to the costs charged to the consumer and substantially lengthen processing time. Finally, in order to be competitive with banks and finance companies, associations indicated a need for an expeditious way in which to make consumer loans as well as for a way in which to provide adequate security for a particular loan.

The Board is persuaded that associations should have the flexibility to use liens on real estate to secure consumer loans and the ability to process them expeditiously. Accordingly, the Board has determined to modify § 545.7–10(b) (relationship of the consumer loan authority to other provisions of Part 545 of the Federal Regulations) and § 561.38 (definition of consumer credit). The amendments are modeled on the Comptroller of the Currency's regulations for national banks. Under the regulation as amended, loans in which the association "relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home as the primary security for the loan" are to be made as consumer loans. An association will be required to retain appropriate evidence in its files to demonstrate the justification for its decision. Although this regulation as amended leaves much discretion to association management, the Board expects associations generally to treat loans that are made to purchase the real estate securing the loan as real estate loans.

Inventory Financing and Financing Consumer Leasing

A number of commenters requested that the proposal be amended to authorize inventory financing. These commenters argued that associations can compete with other lenders in making certain kinds of loans, such as automobile loans, only if they can obtain dealer referrals and that they need to be able to finance the dealer's inventory in order to induce him to make those referrals. In addition, several commenters requested that the Board authorize associations to finance consumer leases, either by authorizing associations to directly own the property being leased or by authorizing them to finance the lessor's inventory and to receive an assignment of leases. The latter is basically the same as inventory financing. Some commenters also argued that, in addition to being a good way to generate business in certain kinds of consumer loans, primarily for automobiles and other "big ticket" items such as boats and airplanes, the authority to finance dealer inventory or to finance consumer leasing was also a necessary corollary to the granting of authority to indirectly finance consumer loans.

In the preamble to the proposed regulation, the Board took the position that inventory financing was essentially a commercial loan and thus did not fall within the Act's requirement that the loan be "for personal, family, or household purposes," and that authorizing its use would be inconsistent with Congress's intention of giving associations the additional investment powers needed to enable them to become "family finance centers." In addition, the Board pointed out that, although it does authorize inventory financing for mobile homes, the pertinent statutory language is much broader than the language of the consumer loan provisions of the Act.

After reexamining the issue in light of the comments, the Board has concluded that authorizing inventory financing or the type of lease financing that is essentially comparable to inventory financing would be outside the scope of the statute. There appears to be some confusion among commenters as to what Congress did in granting associations the many new powers contained in the Act. A number of commenters appear to feel that Congress's desire to promote competitive equality between various kinds of financial institutions meant that they must share exactly the same powers. However, achieving greater competitive equality does not mean that the various kinds of financial

institutions must completely lose their separate identities. Congress gave associations the additional powers needed to enable them to compete for and meet the financial service needs of *individual consumers,* allowing them to offer the consumer the convenience of the "family finance center;" it did not intend to turn associations into commercial banks by allowing them to make commercial loans to businesses.

Furthermore, although it may be argued that inventory financing may ultimately lead to the association being able to finance some loans to individual consumers, there is no guarantee that the association will make the loans to the consumers who purchase from a dealer whose inventory it has financed. The dealer may not always refer customers to the lender or the customers may decide to find their own financing. Over the past few years, consumers have become increasingly credit-conscious and often credit-shop on their own for the best terms. This is one reason why credit unions, for example, which are not authorized to do inventory financing, now finance almost 20% of all automobile loans.

In addition, the Board has concluded that lease financing in which an association acquires title to the property and then directly leases it to the consumer is not authorized by statute. Banks are able to engage in this form of consumer leasing under the "incidental powers" clause of 12 U.S.C. § 24. No similar provision exists in the Home Owners' Loan Act and associations are not otherwise authorized by statute to actually acquire property and lease it. The only exception is found in 12 CFR 545.6–10, pertaining to community development investments.

The Board has, however, determined to adopt as proposed the authorization of associations to do indirect consumer lending. This is an extension of direct lending, i.e., the association is either directly financing the consumer's loan according to some arrangement it has made with a dealer to refer customers to it or it is purchasing a loan from a dealer which it is otherwise authorized to make.

Maturity Limitations on Investments in Corporate Debt Securities

A number of commenters thought that the requirement that the average maturity of an association's portfolio of corporate debt securities not exceed five years was unduly restrictive and should be liberalized or completely eliminated. More comment letters were generated by this issue than by any other. The commenters generally contended that this requirement too heavily skewed an association's authorized purchases of corporate debt securities to short-term securities, while the market primarily offers longer-term ones, most in the 7-to-40 year range, with the largest concentration in the 20-to-40 year range. In addition, these commenters felt that the proposed provision would also effectively prevent associations from investing in new issues, which tend to have the highest interest rates and best yields. Since few issues initially have short terms, associations would be forced to concentrate on older issues, which are heavily discounted, less liquid, and have lower yields. Finally, the commenters thought that this provision limited associations' flexibility to actively manage their portfolios to take advantage of market swings or yield differentials. One major securities dealer was the primary proponent of this view and many associations quoted its comments verbatim.

After analyzing these comments, the Board has determined to retain a short-term average maturity requirement for the following reasons. First, the commenters focused almost entirely on the relationship of current yield to a security's maturity and failed to consider the risks of buying long term bonds and the impact of those risks on associations. Lengthening the maturity of an association's investments in corporate debt securities affects the overall maturity of the association's asset mix, continuing and perhaps increasing the imbalance between the maturities of its assets and liabilities. Given the increasingly short-term nature of associations' liabilities and the long-term nature of much of their mortgage portfolio, the Board would not like to see associations exacerbate this maturity imbalance by concentrating their corporate debt security investments in long-term issues.

Second, although an association increases income volatility by investing in short-term bonds, it would reduce price volatility since the key determinant of price volatility among bonds is the time of maturity, with longer-term bonds being more volatile than shorter-term ones. In recent months, the price volatility of bonds has exceeded that of common stock. Some investment advisers have noted that because of the recent bond price volatility, in large part a reaction to the instability of credit markets caused by inflation and recent changes in the conduct of monetary policy, bonds have become speculative investments, bought more for their potential for rising prices than for the promise of a protected, regular source of interest income. However, as interest rates rise, bond prices fall. Given the wide fluctuations in interest rates over the past year and the inability of investors to correctly forecast what interest rates will be, investments in long-term bonds have become increasingly risky. As a result, the Board believes that associations should be encouraged to invest in shorter-term bonds, an investment strategy which, even though it reduces the opportunity for dramatic profits when rates fall, also reduces the exposure to loss when rates rise.

Third, the fact that most bonds sell at discounts from par does not mean that associations will be unduly penalized by the regulation's average maturity requirement. Because of the record high interest rates over the past year, more than 90 percent of all outstanding corporate bonds are selling at a discount. However, although discounts have lower yields at maturity than do par or premium bonds because of certain tax considerations that do not apply to associations, there is a considerable supply of moderate discount bonds and medium-term notes at near-current coupons that associations may purchase. Furthermore, the yield giveup on current coupons versus discount bonds is only approximately 50 basis points, an amount that the Board believes to be reasonable since discount bonds are less susceptible to call than are current coupons.

Fourth, contrary to the belief of many of the commenters and in part as a result of the trends discussed above, there has been a definite trend toward shorter-term bond issues. In the second quarter of 1980, medium-term bonds (5-to-10-year maturities) accounted for almost half of the total of all new bond issues, whereas they were less than a third of the first quarter 1980 volume and less than one-quarter of the 1976–1979 total issuance. There has been also a substantial issuance of corporate notes rather than bonds since 1974 and many outstanding corporate bonds have aged. As a result, more than $50 billion in corporate bonds with maturities of less than five years exists today, so the maturity averaging process should not be as difficult as some of the commenters contended.

Finally, the older issues that associations would be eligible to purchase under this regulation are not necessarily illiquid since, in addition to the growing market for new issues with medium-term maturities, there is a sizeable secondary market for issues with short maturities. While some outstanding issues may have thin

markets, there are sufficient numbers of issues outstanding that have well-developed secondary markets. Furthermore, keeping the maximum maturity of the portfolio low reduces the likelihood of the need for liquidation of holdings since a portfolio with a balanced maturity structure will constantly generate cash flow through principal redemption as well as through interest payments.

In summary, the Board has concluded that its regulation correctly considers the risks of investment in long-term corporate debt securities on associations' existing asset and liability mix and that a short-term average maturity requirement will give associations some flexibility while encouraging prudent investments in shorter-term securities. However, because the Board has noted the larger number of new issues with maturities is the 5-to-10 year range, it has decided to slightly modify the average maturity requirement by increasing it from five to six years. This should allow associations to more easily participate in the new issue market while helping to correct the imbalance in the maturities of their assets and liabilities.

A number of other issues mentioned in the comment letters are addressed briefly below:

"Natural Person" Requirement

A number of the commenters who requested that the Board authorize associations to do inventory financing also requested it to delete from its definition of "consumer loan" and "consumer credit" the requirement that the loan be made to a "natural person." These commenters wished to be able to use the consumer loan authority to make "consumer loans" to non-profit organizations, family farms, small businesses, professional corporations, and the like. In essence, as in the case of inventory financing, these commenters wanted to be allowed to make business loans. Since the purpose of the "natural person" requirement is to ensure that loans made under the "consumer loan" authority go to living persons in their individual capacities, the Board has rejected the suggestion to delete the "natural person" requirement. To do anything else would be contrary to the purpose and clear wording of the statute.

Board of Directors Approval of Dealers

There was mixed opinion in the comment letters about the requirement that an association's board of directors be required to approve the dealers with whom the association engaged in indirect consumer lending. Some commenters thought that the provision was a necessary safeguard to the prudent use of this new lending authority, while others thought that it would be cumbersome and that the board of directors should be able to delegate this responsibility.

The purpose of this provision, as stated in the proposed regulation, is to guarantee that the board of directors is aware of the various arrangements that the association has made to make consumer loans and that the association has examined the dealer's reliability and financial responsibility so that such arrangements are prudently and carefully considered. This does not mean that directors are required to investigate individually the background of each dealer; rather, management should conduct the necessary investigation and negotiations and present its conclusions and proposal to the board for its approval. Thus, this requirement merely ensures that the board of directors does have actual notice of such arangements and has formally voted, as reflected in its minutes, to authorize the association to engage in indirect lending with a particular dealer. The Board has decided to retain this provision as proposed.

Financing Timesharing Interests in Real Estate

The Board received comments from a number of developers of resort communities and from their trade association urging the Board to clarify the statement in the preamble to the proposed regulation that associations would be authorized to finance the purchase of interval-ownership interests in real estate as unsecured consumer loans. In particular, these commenters were concerned about whether associations would also be able to finance the other ownership and various "right-to-use" forms of timesharing.

As noted in the preamble to the proposed regulation, a substantial portion of the loans made to finance these interests in real estate are made for the purchase of benefits and services in addition to the real estate itself, and this portion, which is not secured by the real estate, must be considered to be an unsecured consumer loan which an association will now be authorized to make under 12 CFR § 545.7–10. The Board intends that any of the various kinds of timesharing, whether of an ownership or "right-to-use" form, may be financed as a consumer loan under this new authority. However, because of the administrative difficulties in separating the real estate portion from the non-real estate portion of such loans, the total amount of such loans should be considered to be an unsecured consumer loan if secured solely by the borrower's interest in the real estate purchased. This conforms to the current practices for financing the purchase of these interests. Since purchase prices commonly range between $1,000 and $15,000, with the average price of one week in an ownership plan at $4,050 and in a right-to-use plan at $3,430, this treatment should not inhibit the making of these kinds of loans.

An association may file a lien against the borrower's interest in such property if it wishes, but the Board expects that it will rely primarily on the borrower's creditworthiness or other assets to ensure repayment of the loan. For the purposes of the limitation on unsecured consumer loans to one borrower, however, the total amount of a timesharing loan, whether or not secured by the borrower's interest in the real estate purchased, shall be considered as an unsecured consumer loan unless additional security is taken.

Scope of the Term "Corporate"

Several commenters asked if tax-exempt debt securities issued by nonprofit and government-sponsored corporations could be purchased under the authorization to invest in corporate debt securities. It is intended that the term "corporate" be broadly interpreted to include any entity duly incorporated under the laws of any state or of the United States. Thus, any debt securities issued by a domestic corporation, whether taxable or tax-exempt, provided that they conform to the other requirements of § 545.9–4(b), may be purchased by associations under this authority. It should be noted that debt securities issued by government entities that are not in the corporate form may not be purchased under this section.

Since there is no statutory restriction as to who may issue commercial paper, none is contained in the proposed regulation other than the requirement that the issuer be domiciled in the United States. Thus, an association is authorized to buy both taxable and tax-exempt commercial paper, provided that such paper conforms to the various limitations in § 545.9–4(b).

Bankers' Acceptances

Since investments in bankers' acceptances are already authorized by § 545.9(a) as assets which qualify as liquid assets under 12 CFR § 523.10(g), it was suggested that they be deleted from the definition of "commercial paper" in § 545.9–4(a). This suggestion has been adopted.

Investments in Low-rated or Unrated Commercial Paper and Corporate Debt Securities and in Foreign Commercial Paper and Corporate Debt Securities

A few commenters requested that associations be allowed to invest in low-rated or unrated commercial paper and corporate debt securities and in foreign commercial paper and corporate debt securities. The rating requirement, the requirement that the issue be denominated in dollars, and the requirement that the issuer be domiciled in the United States are designed to help ensure the prudent use of the new powers. The majority of commenters favored these restrictions as proposed and the Board has adopted them without a change. However, since their inclusion is not mandated by the Act, the Board will monitor associations' use of this new investment authority and will reexamine these provisions if experience indicates that liberalization is warranted.

Number of Ratings Required

The proposed regulation required that at least two nationally recognized investment rating services rate the commercial paper and corporate debt securities within the appropriate grades. Several commenters said that this requirement was unnecessarily restrictive, since many high-grade issues are only rated by one such service and requiring at least two such ratings would only add to the issuer's expenses. The Board finds these arguments to be persuasive and has determined to modify the provision to require rating by only one such service.

Investment in Open-end Investment Companies

Several commenters requested that associations be allowed to invest in open-end investment companies that invest only in securities in which the association could invest directly. This would enable small associations, in particular, to exercise more easily this new investment power.

Section 401 of the Act authorizes Federal associations to invest the shares or certificates of such companies, provided that their portfolios are restricted to investments in which an association by law or regulation may, without limitation as to percentage of assets, invest. Since association investments in commercial paper and corporate debt securities are subject to a 20-percent-of-assets limitation, they would not fall within this provision. Therefore, the Board has determined to authorize such indirect investments as part of this regulation and has so amended § 545.9–4(a).

An association will be authorized to invest in the shares of an open-end investment company, registered with the Securities and Exchange Commission, whose portfolio is restricted solely to investments an association is authorized to make under this or other regulations or law. This means that such company's investments in commercial paper and corporate debt securities must conform to the limitations contained in § 545.9–4(b). The limitation on investments in the issues of one issuer, contained in § 545.9–4(b)(3), has been modified, though, because of the impracticability of applying this requirement to an investment in the shares of these investment companies. As a result, an association need not count these investments when it determines whether it has complied with this requirement; rather, an association may not invest an amount exceeding five percent of its assets in the shares of any one such investment company. In addition, an association that invests in the shares of these companies should note that the six year average maturity test for investments in corporate debt securities applies to its portfolio, not to that of the investment company.

Scheduled Items and the Classification System

The comments overwhelmingly favored the proposed classification scheme for delinquent consumer installment credit. As the Board noted in the preamble to the proposed regulation, the principal provision that would be affected by the higher rate of delinquencies found in the usual consumer loan program is the scheduled-items computation, which has been amended to include all of an association's "slow consumer loans". Those who suggested alternatives for including slow consumer loans within the scheduled-items computation were concerned mainly about the effect of delinquent consumer loans upon the various regulatory provisions that have been deleted by Board Resolution No. 80–700 (i.e., the "4%" provisions on nationwide lending, participation loans, etc., in 12 CFR §§ 545.6–12, 563.9, 563.9–1, and 563.9–2).

Since the purpose of the scheduled-items computation is to reflect accurately the soundness of an association's portfolio, the Board has decided to retain this provision as proposed. In the Board's view, the few remaining provisions left in the regulations, other than the net worth requirements, in which scheduled items affect associations' investment authority do not warrant special rules for slow consumer loans that are to be included in scheduled items.

Limitation on Unsecured Consumer Loans to One Borrower

It was suggested that this provision might be too restrictive, particularly where new associations with very low net worth and assets are concerned. A minimum level of $2,500–$3,000 in unsecured consumer loans to the same borrower was recommended, even if the association did not meet the basic test contained in § 545.7–10(c). This suggestion has been adopted and every association, regardless of its net worth or asset position, will be able to make at least $3,000 in unsecured consumer loans to the same borrower. This amount will be increased each January 1, beginning in January, 1982, by the dollar amount that reflects the percentage increase, if any, in the Consumer Price Index over the past twelve months as shown in the November-to-November index.

Charge-Off of Consumer Credit Classified as a Loss

Several commenters questioned the proposed regulation's requirement that consumer credit classified as a loss be charged either to the association's net worth or to its current earnings. The Board has revised this section to require that the loss be charged off only against the association's current earnings. In conformance to the definition of "net income" contained in § 563c.12 of the Insurance Regulations, all such losses should be charged to current earnings. However, associations wishing to establish a valuation or bad debt allowance for such losses may do so by a charge to the applicable non-operating expense account, and losses may be charged to such allowance account.

Other Changes

Several other changes, primarily of a clarifying nature, have been made in the regulations:

(1) The definition of "consumer loan" was amended to clearly indicate that credit extended in connection with credit cards and loans in the nature of overdraft protection are not "consumer loans" and are not to be counted within the 20 percent-of-assets limitation, even though they are forms of "consumer credit" and must be included in the loan classification system.

(2) The definition of "open-end consumer credit" was amended to conform to that of "open-end credit" contained in regulation Z.

(3) An explanation of "marketable" was added to the definition of corporate debt security.

(4) Two changes were made in the limitations on investments in convertible corporate debt securities. First, the requirement that the security be traded on a national exchange was clarified. The word "securities" was added between "national" and "exchange" to make it clear that this term is to be defined as those exchanges registered with the Securities and Exchange Commission as "national securities exchanges" under 15 U.S.C. § 78c(a)(1).

Second, the Board has adopted an additional limitation, requiring associations, at the time of purchase of such securities, to write down the cost of the securities to the investment value of the securities considered independently of the conversion feature. This provision is modelled on the Comptroller of the Currency's regulation on investments in convertible securities and ensures that the bond aspects of the security remain primary, since associations are only authorized by the Act to invest in "debt securities" and not to invest in equity issues.

The Board finds that a 30-day delay of effective date pursuant to 12 CFR 508.14 and 5 U.S.C. 553(d) is unnecessary, as the amendments implement a statutory revision and relieve current regulatory restrictions.

Accordingly, the Board hereby amends Parts 541 and 545, Subchapter C, and Parts 561 and 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 541—DEFINITIONS

1. Add new §§ 541.25, 541.26, 541.27, and 541.28, to read as follows:

§ 541.25 Consumer loan.

A secured or unsecured loan to a natural person for personal, family, or household purposes. Such loan is a type of consumer credit, as defined in § 561.38 of this Chapter, and may be made as either open-end or closed-end consumer credit, as defined in §§ 561.39 and 561.40, but does not include credit extended in connection with credit cards and loans in the nature of overdraft protection.

§ 541.26 Loans.

Obligations and extensions or advances of credit; and any reference to a loan or investment includes an interest in such a loan or investment.

§ 541.27 Commercial paper.

Any note, draft, or bill of exchange which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.

§ 541.28 Corporate debt security.

A marketable obligation, evidencing the indebtedness of any corporation in the form of a bond, note and/or debenture which is commonly regarded as a debt security and is not predominantly speculative in nature. A security is marketable if it may be sold with reasonable promptness at a price which corresponds reasonably to its fair value.

PART 545—OPERATIONS

2. Add a new § 545.7–10, to read as follows:

§ 545.7–10 Consumer loans.

(a) *General.* A Federal association may make direct or indirect consumer loans: *Provided,* that (1) at any one time the total investment made under this section and § 545.9–4 of this Part ("Commerical paper and corporate debt securities"), added together, shall not exceed 20 percent of an association's assets; and (2) that before indirect loans are made through a dealer, the dealer is approved by the association's board of directors. The authority to make a consumer loan includes the authority to originate purchase, sell, service, and participate in such loans: *Provided,* that such loans conform to the provisions of this section and the association's written underwriting standards.

(b) *Relationship to other provisions of this Chapter.* If a loan that may be made under this section is also authorized to be made under another section, which may have different percentage-of-assets and other limitations or requirements, an association shall have the option of choosing under which applicable section the loan shall be made.

(c) *Limitation on unsecured loans to one borrower.* The total balances of all outstanding loans, as defined in § 563.9–3(a)(2) of this Chapter, that may be made under this section in unsecured loans to one borrower, as defined in § 563.9–3(a)(1), is limited to the lesser of ¼ of one percent of an association's assets or five percent of its net worth: *Provided,* that an association may make up to $3,000 in unsecured loans to any one borrower and, beginning on January 1, 1982, and annually thereafter, such amount shall be adjusted by the dollar amount that reflects the percentage increase, if any, in the Consumer Price Index during the previous twelve months as shown in the November-to-November index.

§ 545.9–1 [Amended]

3. Delete subparagraph (a)(3) of § 545.9–1 and renumber subparagraphs (a)(4) through (8) as (a)(3) through (7), respectively.

4. Add a new § 545.9–4, to read as follows:

§ 545.9–4 Commerical paper and corporate debt securities.

(a) *General.* A Federal association may invest in, sell, or hold commerical paper and corporate debt securities, including corporate debt securities convertible into stock, subject to the limitations set forth in paragraph (b): *Provided,* that at any one time the total investment made under this section and § 545.7–10 ("Consumer loans"), added together, shall not exceed 20 percent of an association's assets. An investment under this section includes the investing in, redeeming, or holding of shares in any open-end management investment company which is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 and whose portfolio is restricted by such management company's investment policy, changeable only if authorized by shareholder vote, solely to the investments that an association is authorized to invest in under this section and other regulations or law.

(b) *Limitations.* (1) As of the date of purchase, as shown by the most recently published rating made of such investments by at least one nationally recognized investment rating service, the commerical paper must be rated in either one of the two highest grades and the corporate debt securities must be rated in one of the four highest grades.

(2) The commerical paper or corporate debt securities shall be denominated in dollars and the issuer shall be domiciled in the United States.

(3) At any one time, an association's total investment in the commerical paper and corporate debt securities of any one issuer, or issued by any person or entity affiliated with such issuer, shall not exceed one percent of the association's assets: *Provided,* that this provision shall not apply to investments in the shares of an open-end

management investment company. In such cases, an association's total investment in the shares of any one such company shall not exceed five percent of the association's assets.

(4) Investments in corporate debt securities convertible into stock are subject to the following additional limitations: (i) Purchase of securities convertible into stock at the option of the issuer is prohibited; (ii) at the time of purchase, the cost of such securities must be written down to an amount which represents the investment value of the securities considered independently of the conversion feature; (iii) such securities must be traded on a national securities exchange; and (iv) associations are prohibited from exercising the conversion feature.

(5) At any one time, the average maturity of an association's portfolio of corporate debt securities may not exceed six years.

(6) An association shall maintain information in its files adequate to demonstrate that it has exercised prudent judgment in making investments under this section.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 561—DEFINITIONS

5. Amend paragraph (a) of § 561.15, to read as follows:

§ 561.15 Scheduled items.

The term "scheduled items" means:

(a) Slow consumer credit, slow loans (other than loans specified in paragraph (b) of this section).

* * * * *

6. Add new §§ 561.16a, 561.16b, 561.38, 561.39, and 561.40, to read as follows:

§ 561.16a Slow consumer credit.

The term "slow consumer credit" means closed-end consumer credit delinquent 90 to 119 days (4 monthly payments) and open-end consumer credit delinquent 90 to 179 days (4-to-6 zero billing cycles). For the purposes of computing delinquency, a payment of 90 percent or more of the contractual payment will be considered as a full payment. If an association can clearly demonstrate that repayment would occur regardless of delinquency status—for example, the loan is well-secured by collateral and is in the process of collection; the loan is supported by a valid guarantee or insurance; or it is a loan where the claims have been filed against a solvent estate—then such loan need not be classified as "slow consumer credit." The following table illustrates the delinquency computation:

Closed-end consumer credit

Due date	Period	Delinquency status	Classification
3/10	3/10–4/09	Not delinquent	
4/10	4/10–5/09	30 days or 2 payments	
5/10	5/10–6/09	60 days or 3 payments	
6/10	6/10–7/09	90 days or 4 payments	Slow.

Open-end consumer credit

Statement	Day	Zero billing cycle	Payment record	Days delinquent	Classification
1	1			0	
2	30	1	No payment	*5	
3	60	2	No payment	30	
4	90	3	No payment	60	
5	120	4	No payment	90	Slow.
6	150	5	No payment	120	Slow.
7	180	6	No payment	150	Slow.

* For purposes of illustration, assume consumer has 25 days in which to pay before payment is considered delinquent.

§ 561.16b Consumer credit classified as a loss.

The term "consumer credit classified as a loss" means closed-end consumer credit delinquent 120 days or more (5 monthly payments or more) and open-end consumer credit delinquent 180 days or more (7 zero billing cycles or more). For the purposes of computing delinquency, a payment of 90 percent or more of the contractual payment will be considered as a full payment. If an association can clearly demonstrate that repayment would occur regardless of delinquency status—for example, the loan is well-secured by collateral and is in the process of collection; the loan is supported by a valid guarantee or insurance; or it is a loan where claims have been filed against a solvent estate—then such loan need not be classified as a loss. The following table illustrates the delinquency computation:

Closed-end consumer credit

Due date	Period	Delinquency Status	Classification
3/10	3/10–4/09	Not delinquent	
*	*	*	*
6/10	6/10–7/09	90 days or 4 payments	Slow.
7/10	7/10–8/09	120 days or 5 payments	Loss*.
8/10	8/10–9/09	150 days or 6 payments	Loss*.

Open-end consumer credit

Statement	Day	Zero billing cycle	Payment record	Days delinquent	Classification
1	1			0	
*	*	*	*	*	*
7	180	6	No payment	150	Slow.
8	210	7	No payment	180	Loss*.
9	240	8	No payment	210	Loss*.

*Charge-off as required by § 563.46 occurs.

§ 561.38 Consumer credit.

Credit extended to a natural person for personal, family, or household purposes, including loans secured by liens on real estate and chattel liens secured by mobile homes: *Provided,* the association relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan. Appropriate evidence to demonstrate justification for such reliance should be retained in an association's files. Among the types of credit included within this term are consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; loans in the nature of overdraft protection; and credit extended in connection with credit cards.

§ 561.39 Open-end consumer credit.

"Open-end credit" as defined in Regulation Z (12 CFR 226.2(x)).

§ 561.40 Closed-end consumer credit.

Consumer credit other than open-end consumer credit.

PART 563—OPERATIONS

7. Add a new § 563.46, to read as follows:

§ 563.46 Charge-off of consumer credit classified as a loss.

When consumer credit is classified as a loss, as defined in § 561.16b of this Subchapter, it shall be charged against the association's current earnings.

(Sec. 5(c)(2)(B), 48 Stat. 132, as amended by Title IV, § 401, Public Law 96-221, 94 Stat. 151; § 5(d), 48 Stat. 132, as amended (12 U.S.C. 1464(d)); §§ 402, 403, 48 Stat. 1256, 1257, as amended (12 U.S.C. 1725, 1726); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 C.F.R. 1943-48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-36002 Filed 11-17-80; 8:45 am]

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12 CFR Parts 561 and 563

[No. 80-694]

Net Worth Amendments

Dated: November 6, 1980.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Board has amended the net worth requirements imposed on institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation by (1) replacing the current net worth requirement of five percent of insurable accounts plus five percent of secured borrowings with a requirement of four percent of liabilities, (2) eliminating the Asset Composition and New Worth Index plus the five percent of secured borrowings requirement, (3) providing for up to a ten percent reduction in the otherwise applicable net worth requirement proportionate to the amount of long-term debt, flexible-yield mortgages and short-term liquid assets held, and (4) providing a limited exemption from the net worth and reserve requirements for institutions that sell residential mortgages carrying an interest rate of seven and one-half percent or less. These amendments also reduce the current statutory reserve requirement from an amount equal to five percent of insured accounts to an amount equal to four percent of insured accounts.

EFFECTIVE DATE: November 17, 1980.

FOR FURTHER INFORMATION CONTACT: Jerry Hartzog, Office of Policy and Economic Research (telephone number: (202) 377-6782), or Kenneth F. Hall, Office of General Counsel (telephone number: (202) 377-6466), Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: On July 24, 1980, the Federal Home Loan Bank Board proposed amendments to its regulations pertaining to reserve accounts (FHLBB Res. No. 80-445; 45 FR 50797 (1980)). A total of 85 comment letters were received during the public comment period, which ended on September 29, 1980, from Federally and State-chartered savings and loan associations, trade groups, the Federal Home Loan Banks, and a mortgage insurance company trade association. The proposed amendments provided for the following changes:

(1) replacement of the current net worth requirement of 5 percent of insurable accounts plus 5 percent of secured borrowings with a requirement of 4 percent of all liabilities;

(2) elimination of the Asset Composition and Net Worth Index plus the 5 percent of secured borrowings requirement;

(3) reduction by up to 10 percent of the otherwise applicable net worth requirement in proportion to the amount of long-term debt, flexible-yield mortgages and short-term liquid assets held by an association;

(4) limited exemption from the net worth and statutory reserve requirements for institutions that sell residential mortgages carrying an interest of 7½ percent or less; and

(5) reduction of the statutory reserve requirement from 5 to 4 percent of insured accounts.

The proposed amendments were generally supported by a majority of the commenters, although many made recommendations for modification or clarification of one or more of the provisions. After reviewing the comments received and other available information, the Board has determined to adopt the proposed amendments substantially as proposed, as described below.

Replacement of Current Net Worth Requirement With a Liability Test

As stated in the proposal, the reason for the proposed change from a base keyed only to savings to a liabilities base, which includes both savings and borrowings, is a concern that the future growth of non-deposit sources of funds will make a savings-based test increasingly inadequate as an indicator of financial soundness. Due to increasing competition from non-depository institutions such as money market funds, the planned phase-out of deposit rate controls and the rate differential, and a projected strong demographic demand for housing and mortgage loans in the 1980s, the rate of growth of deposits in the future is likely to be insufficient to meet the demand for mortgage loans. It is expected, therefore, that associations will increasingly utilize non-deposit sources of funds to eliminate that short-fall, particularly in light of recent revisions of the Board's outside borrowing regulations that provide greater flexibility for associations to use outside sources of funds. Because this would mean the amount of savings as a proportion of total liabilities will decrease, the Board believes that total liabilities will prove to be a better measure of the reserve needs of insured institutions than the current savings base.

In the proposed regulation, "liabilities" was described as all on-balance-sheet liabilities of an insured institution, including the unpaid principal amount of all outstanding borrowings (including borrowings from a Federal Home Loan Bank or a State-chartered central reserve institution), whether secured or unsecured and regardless of maturity. Many commenters suggested that liabilities be defined to exclude loans in process, deferred fees, accounts payable, escrow accounts, and other non-interest-bearing liabilities. It was argued that these are not "true" liabilities, although they are carried on the liabilities side of a balance sheet, and thus should not be included in the base used to establish the net worth requirement.

The Board, however, has determined to use total liabilities, which, by definition, is equal to the difference between total assets and net worth and will include all items that appear on the liabilities side of a balance sheet. The Board believes that a base comprised of all liabilities, with no exceptions, is the most appropriate base for purposes of calculating the net worth requirement because the purpose of that requirement is to serve as a measure of the size of an institution rather than of the amount of reserves that should be maintained against various types of liabilities. As such, the net worth requirement is a signal to the Board of possible capital adequacy problems. Enforcement of the requirement varies with the nature of the problems. Given this function of the requirement, the Board believes it should not distinguish between different types of liabilities.

Currently, the Board permits associations to determine the base on which the net worth requirement is calculated to be an average of the balance during the current year plus the balances during the previous four years (12 CFR 563.13[b][2][ii]). Under the proposed regulation, this averaging would not have been permitted for liabilities other than checking, tax and loan, and savings accounts. All of the commenters who addressed this matter favored averaging for the entire liabilities base. The Board agrees that averaging should be permitted for all

liabilities, and the final regulation provides accordingly.

Since changing to a liabilities standard enlarges the base against which the percentage requirement is applied, leaving the percentage at five percent would result in an increase in the net worth requirement for insured institutions. The Board believes it would be inappropriate at this time to increase the net worth requirement and, therefore, has determined to adopt a percentage requirement of four percent, as proposed. Since the Board is reducing the percentage requirement, the Board believes it is unnecessary to provide for a gradual phasing-in of the new requirement, as a number of commenters had suggested. The Board understands that a very small number of institutions may experience an immediate increase in the net worth requirement as a result of these amendments. While this is unavoidable, the Board is prepared to exercise its supervisory discretion in the case of undue increases in the requirement.

Elimination of Asset Composition and Net Worth Index

The current net worth regulation provides that insured institutions shall maintain a level of net worth calculated in accordance with the Asset Composition and Net Worth Index ("ACNWI") (see 12 CFR 563.13(b)(2)) plus five percent of secured borrowings with an original stated maturity of more than one year (see 12 CFR 563.13(b)(4)), if such a level is greater than that based on the percentage-of-savings test. Approximately 22 percent of insured institutions utilize the ACNWI while the remainder employ the savings-based test.

The Board has determined to eliminate the ACNWI, a change the Board believes will significantly simplify the reserve regulation. Currently, institutions must calculate the results of both the ACNWI test and the five-percent-of-savings test. Pursuant to the amendment, institutions will only have one net worth test to meet. This simplification is in accordance with the Board's continuing commitment to meet the simplification objective of Executive Order 12044 ("Improving Government Regulations") as well as the requirements of Section 803(3) of the Depository Institutions Deregulation and Monetary Control Act of 1980 (Pub. L. No. 96-221, 94 Stat. 132 (1980)), which requires that, to the maximum extent possible, regulations shall minimize "compliance costs, paperwork, and other burdens on the financial institutions, consumers, and public * * *."

Although a number of commenters suggested that the ideal measure of reserve needs would be based on the risk of holding various types of assets, most recognized the difficulty of measuring the relative riskiness of individual asset categories. The purpose of the ACNWI requirement has been to control excessive risk-taking by making an institution's net worth requirement vary with the riskiness of the types of assets held by the institution. It has proved quite difficult, however, to establish reserve requirements for particular types of assets that accurately reflect the comparative risks of holding those assets. In addition, the risks of holding various types of assets tend to change over time, necessitating a continuing assessment of the risks associated with each type of asset. In light of these problems with the ACNWI, the Board believes its usefulness and practicality are limited. The Board notes the past year has indicated that interest rate risk caused by rate volatility has a more pronounced effect on the liabilities side of the balance sheet than on the asset side, further limiting the effectiveness of the ACNWI as a net worth tool.

Qualifying Balance Deduction

As proposed, the Board has adopted a reduction of the net worth requirements for insured institutions holding certain qualifying balances. The reduction is structured to reflect the lower reserve needs, due to reduced risk, of institutions that hold such qualifying balances. The amount of the reduction is proportionate to the amount of qualifying balances held by an institution. The concept of a net worth reduction based on qualifying balances was favored by the large majority of commenters.

The qualifying balances, as proposed, included (1) interest-bearing liquid assets, as described in 12 CFR 523.10 (including accrued interest on unpledged assets that qualify as liquid assets under that definition or would so qualify except for their maturities), that will mature within one year, (2) up to one-half of all flexible-yield mortgages (*e.g.*, renegotiable rate mortgages, variable rate mortgages), and (3) fixed-rate, liability sources of funds (e.g., outside borrowings, Federal Home Loan Bank advances, certificate accounts) that have a remaining term to maturity of more than five years. The Board specifically requested comment on whether certificate accounts should be included as a qualifying balance, since such accounts are subject to prepayment and therefore may not exhibit the true characteristics of a long-term liability source of funds. Although a number of commenters suggested that the new penalty for early withdrawals of funds from such accounts should increase the stability of the accounts, other commenters felt institutions still cannot be adequately assured that certificate funds will not be withdrawn prematurely. The Board agrees that, where certificate-holders have the option of withdrawing funds (even though subject to a penalty), certificate accounts cannot be considered sufficiently stable to be included as qualifying balances. Therefore, the final regulation excludes from the qualifying balances set out in the proposal certificate accounts that permit early withdrawal.

Several commenters also suggested that *all* flexible-yield mortgage loans should count as qualifying balances. The Board has determined, however, to retain the 50-percent limit in the final regulation in recognition of the fact that current regulations authorizing the use of such mortgages may not provide associations with sufficient rate flexibility to justify classification of all such mortgages as qualifying balances. The Board has proposed amendments to these regulations that would increase the rate sensitivity of such mortgage instruments. Therefore, the Board at some later time may reconsider the 50-percent limitation contained in the final rule.

Under the regulation, the dollar amount of an institution's net worth requirement will be decreased by three cents for every dollar of qualifying balances held, in an amount up to ten percent of the net worth that would otherwise be required by § 563.13(b)(2). This figure was reached after study of the historical behavior of interest rates and of the manner in which S&L profitability fluctuates. While many commenters suggested that the ten percent limit should be increased to 15 or 20 percent, the Board has determined at this time to retain the limit as proposed.

As the proposal stated, the amendment focuses on the difficulty institutions face of an imbalance between the maturities of their liabilities and their assets. This is the "borrow short/lend long" problem. The maturity imbalance of an institution is the difference between the average duration (or effective average maturity) of its assets and the average duration of its liabilities. If an institution's assets and liabilities have equal durations, cyclical fluctuations in interest rates will not cause fluctuations in profitability. The maturity imbalance of the typical

savings and loan association causes its cost of funds to fluctuate more widely over the cycle than its asset yield, thereby causing cyclical fluctuations in profitability.

The fact that institutions with maturity imbalance problems will encounter periods of unusually low profits means they must maintain a high net worth level to ensure the availability of sufficient reserve funds during those periods. Conversely, institutions that have maturity-balancing assets and liabilities are less vulnerable to fluctuations in profitability. Therefore, they need not maintain as high a level of reserves.

In the past, restricted asset and liability powers made it difficult for many insured institutions to alleviate maturity imbalances. At present, however, due to expanded borrowing authority, flexible-yield mortgage authority, and a growing control over deposit composition resulting from the phase-out of deposit rate controls, the Board believes these associations have the ability to begin to alleviate their maturity imbalances. Through this amendment, the Board seeks to structure the net worth requirements to reflect the reserve needs of institutions holding maturity-balancing assets and liabilities and to provide institutions with maturity imbalance problems with an incentive for restructuring their holdings of assets and liabilities to make cyclical fluctuations in profitability more manageable.

Limited Exemption Relating to Sale of Mortgages

Currently, many insured institutions hold a significant number of low-interest, fixed-rate mortgage loans. Since today's substantially higher market rates require these institutions to pay more for the money they use to make mortgages, they are finding themselves in the midst of an earnings squeeze. This situation will not ease until the amount institutions take in as income matches more closely both the amount they pay to depositors to attract savings and the cost of their borrowings.

The Board is concerned with the detrimental effects this earnings squeeze has had on the nation's mortgage market. Therefore, the Board has determined to provide a limited exemption from the net worth and reserve requirements relating to the sale of mortgages with interest rates of seven and one-half percent or below. Without such exemption, fewer institutions would be able to sell their low-yielding mortgages because the losses they would incur from such sales would reduce their net worth and reserves below the regulatory minimums. This amendment, which received much favorable comment, would provide insured institutions with a means of reducing the number of low-yielding mortgages in their portfolios and, thus, of improving their income streams.

The amended regulation grants a limited exemption subject to the following conditions:

(1) failure to meet the minimum net worth and reserve requirements would result from losses from the sale of fixed-rate residential mortgages that have an original interest rate of seven and one-half percent or lower and that have a remaining term at the time of sale of at least five years;

(2) the total book value of such mortgages sold does not exceed ten percent of the total book value of the institution's residential mortgage assets, and the book value of such mortgages sold in any one fiscal year does not exceed five percent of the total book value of the institution's residential mortgage assets;

(3) all of the proceeds of such sales are reinvested in residential mortgage loans within 90 days;

(4) the regulation may not be used to reduce the institution's statutory reserve to less than three percent;

(5) the exemption shall be effective for no more than five years from the date of the sale in connection with which the exemption is granted; and

(6) the institution must maintain complete records of all transactions undertaken pursuant to the regulation.

The exemption is also conditional on the institution establishing and maintaining a plan setting forth (1) that all conditions set out above shall be met, (2) the benefits, including the cash-flow benefits, the institution expects to gain from the exemption, (3) the institution's plan for building up its net worth to the minimum amount required within five years of the date of the sale in connection with which the exemption is granted, and (4) a summary of any prior sales made pursuant to the exemption provision.

In the proposed regulation, the period required for reinvestment of proceeds from sales of the low-rate mortgages was 60 days. Most commenters felt institutions would be hard-pressed to arrange reinvestments within such a short period of time, and recommended that as much as 120 days be permitted for reinvestment. While the Board notes that, at any point in time, institutions normally have outstanding a number of commitments in which such proceeds can readily be invested, the Board agrees that 90 days would be a more appropriate period for reinvestment. However, the Board wishes to make clear that mortgage loans made with such proceeds must be closed within 90 days; it is not sufficient merely to have such funds committed within that period.

Finally, any sale made pursuant to the exemption provision will have to occur on or before December 31, 1982. Thus, institutions will have a limited time period within which to take advantage of the exemption provision.

Retention of Scheduled-Items Requirement

The proposed regulation will retain the current provision that 20 percent of scheduled items be included as part of the net worth requirement. Although a minority of commenters felt this provision should be deleted, the Board believes the 20 percent requirement should be retained because scheduled items are indicative of risky assets that may default and so result in a loss of principal to an institution. In addition, scheduled items represent already occurring losses in the form of late payments. Finally, it is believed that the amount of scheduled items represents a measure of the level of expertise in loan underwriting by institution management. Retention of the requirement, therefore, will be of value to the Board in assessing the financial soundness of institutions.

Some commenters maintained that retention of this requirement would result in "double-counting" since institutions are also required to establish valuation loss reserves on scheduled items. The Board wishes to make clear, however, that the valuation loss reserve and 20-percent requirements meet two different purposes. The valuation reserve reflects the reduced potential for collecting the full value of a scheduled item, while the 20-percent requirement reflects the increased risk of default on the delinquent loan. Therefore, both reserves are needed to reflect the true status of scheduled items. For example, if an association has a loan with a balance due of $140,000, secured by real estate having an appraised value of $100,000, it would be required to establish a valuation reserve of $40,000. The net scheduled item of $100,000 would still represent an investment in a loan that is 100 percent of appraised value. Because of the increased risk associated with a loan that is both 100 percent of value and a scheduled item, the Board believes that an increase in net worth—in this case, of 20 percent of the $100,000 scheduled items, or $20,000—should also be required.

Reduction of Statutory Reserve Component of Net Worth

Section 403(b) of the National Housing Act (12 U.S.C. 1726(b)), as amended by section 409 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (*supra*), provides that the statutory reserve shall be no greater than six percent nor less than three percent of insured accounts, as determined by the Board. The Board has determined to reduce the existing statutory reserve requirement of five percent (see 12 CFR 563.13(a)(2)) to four percent of insured accounts. This will ensure that the statutory reserve requirement operates in tandem with the net worth requirement, which the Board intends to utilize as its primary measure of the reserve needs of insured institutions.

The Board is also taking this opportunity to make certain technical amendments to the reserve regulations, as amended by FHLBB Res. No. 80-444 on July 24, 1980 (45 FR 50713 (1980)). First, the Board codifies its policy that only permanent stock may be used to meet the statutory reserve and net worth requirements. The Board recognizes, however, that there may be situations where this policy may be too inflexible. Thus, the final regulation provides that redeemable stock may be included in statutory reserve and net worth where redemption is permitted only in the event of a merger, consolidation or reorganization approved by the Federal Savings and Loan Insurance Corporation where the issuing institution is not the survivor, or where redemption is accomplished with proceeds from the issuance of permanent stock. Where redemption would occur because of a merger, consolidation or reorganization, the Corporation would have the opportunity to appropriately condition or withhold approval of the transaction if redemption would cause the resulting institution's net worth position to be unsatisfactory. Second, the amendments clarify the application of the new calculations and the dates on which various account balances should be determined for purposes of calculating the minimum net worth requirement. The final regulations, therefore, amend 12 CFR 561.13 and subparagraphs (a)(3) and (b)(1) of 12 CFR 563.13.

The Board finds that the 30-day delay of the effective date following publication as prescribed in 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary because it is in the public interest that insured institutions be authorized to apply the revised reserve requirements immediately.

Accordingly, the Board hereby amends Parts 561 and 563, Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

Subchapter D—Federal Savings and Loan Insurance Corporation

PART 561—DEFINITIONS

1. Amend the first sentence of § 561.13 (12 CFR 561.13) to read as follows:

§ 561.13 Net worth.

The term "net worth" means the sum of all reserve accounts (except specific or valuation reserves), retained earnings, permanent stock, and any other nonwithdrawable accounts of an insured institution, except that capital stock may be included as net worth if it would otherwise qualify as permanent stock but for either a provision permitting redemption in the event of a merger, consolidation or reorganization approved by the Corporation where the issuing institution is not the survivor, or a provision permitting redemption where the funds for redemption are raised by the issuance of permanent stock. * * *

PART 563—OPERATIONS

2. Amend § 563.13 (12 CFR 563.13) as follows:

a. Amend subparagraphs (a)(2) and (a)(5)(i) by substituting the word "four" for the word "five" therein;

b. Amend subparagraph (a)(3) by deleting subdivision (ii) thereof and redesignating subdivision (iii) as new subdivision (ii), as set forth below;

c. Revise subparagraphs (b) (1) through (4) thereof, as set forth below; and

d. Add a new paragraph (d) thereto, as set forth below.

§ 563.13 Reserve accounts.

(a) *Statutory reserve requirement.*

* * * * *

(3) Institutions may count as reserves meeting the reserve requirement those items listed in the definition of net worth, as set forth in § 561.13 of this Subchapter, except that the following items shall be excluded:

(i) Subordinated debt securities, and

(ii) Specific loss reserves.

* * * * *

(b) *Net worth requirement.*

(1) *Calculation period.* The annual net worth requirement, as set forth in paragraph (b)(2) of this section, shall be established as of the first day of each fiscal year and shall be met on the annual closing date of the year; *provided,* that institutions shall change to the beginning-of-year calculation by January 1, 1983, or sooner, but that if such change is made prior to that date, there may be no reversion to the end-of-year calculation.

(2) *Minimum required amount.* On the annual closing date on the twentieth anniversary of insurance of accounts and on each annual closing date thereafter, an insured institution shall have net worth at least equal to the sum of (i) four percent of the amount on the date specified in paragraph (b)(1) of this section or of the average amount on such date and on the corresponding date(s) of one or more of the four immediately preceding fiscal years (provided all such dates are consecutive) of all liabilities (*i.e.,* total assets minus net worth) of the institution, plus (ii) an amount equal to 20 percent of the institution's scheduled items. Commencing with the annual closing date after the fiscal year in which a certificate of insurance is issued, each insured institution that has not reached the twentieth anniversary of insurance of accounts shall have a net worth at least equal to the sum of the amount required by (i) above multiplied by a fraction of which the numerator is the number of consecutive years of insurance of accounts and the denominator is twenty, plus an amount equal to 20 percent of the institution's scheduled items.

(3) *Maintenance of minimum level.* Institutions shall maintain (until the next annual closing date) net worth at least equal to the dollar amount required at the last closing date.

(4) *Qualifying balance deduction.* The amount of the minimum net worth requirement imposed by paragraph (b)(2) of this section will be reduced by three cents for each dollar of "qualifying balances" held by the institution in an amount not exceeding ten percent of the amount of net worth that would otherwise be required by paragraph (b)(2). "Qualifying balances," as used in this paragraph, means (i) interest-bearing liquid assets, as described in § 523.10 of this Chapter (including accrued interest on unpledged assets that qualify as liquid assets within that definition or that would so qualify except for their maturities), provided that they will mature within one year, (ii) up to one-half of all mortgages on which the interest rate may fluctuate, and (iii) fixed-rate, liability sources of funds (including outside borrowings and Federal Home Loan Bank advances but excluding certificate accounts permitting withdrawal of account funds prior to maturity) that have a remaining term to maturity of more than five years.

* * * * *

(d) *Exemption relating to sale of mortgages.* An insured institution shall

not be required to meet the minimum net worth requirement set out in paragraph (b)(2) of this section or the statutory reserve requirement set out in paragraph (a)(2) of this section, to the following extent and subject to the following conditions:

(1) Failure to meet the minimum net worth and reserve requirements shall result solely from losses recognized upon the sale of fixed-rate residential mortgages that have an original interest rate of seven and one-half percent or below and that have a remaining term at the time of sale of at least five years;

(2) The total book value of such mortgages sold shall not exceed ten percent of the total book value of the institution's residential mortgage assets, and the book value of such mortgages sold in any one fiscal year shall not exceed five percent of the total book value of the institution's residential mortgage assets;

(3) All of the proceeds of such sales shall be reinvested in residential mortgage loans within 90 days;

(4) The authority granted by this paragraph (d) shall not be used to reduce the institution's statutory reserve to less than three percent;

(5) The exemption shall be effective for no more than five years from the date of the sale in connection with which the exemption is granted;

(6) The institution establishes and maintains a plan setting forth (i) that all of the conditions set out above shall be met; (ii) the benefits, including cash-flow benefits, the institution expects to gain from the exemption; (iii) the institution's plan for building up its statutory reserve to the minimum amount required by paragraph (a)(2) of this section and its net worth to the minimum amount required by paragraph (b)(2) of this section within five years of the date of the sale in connection with which the exemption is granted; and (iv) a summary of any prior sales made pursuant to this paragraph; and

(7) The institution shall maintain complete records of all transactions undertaken pursuant to this paragraph.

In no event shall any sale made under the provisions of this paragraph (d) occur after December 31, 1982.

(Sec. 409, 94 Stat. 160. Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730). Sec. 5A, 47 Stat. 727, as amended by Sec. 1, 64 Stat. 256, as amended, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1437). sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464). Reorg. Plan No. 3 of 1947, 12 FR 4891, 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

Robert D. Linder,

Acting Secretary.

[FR Doc. 80-36004 Filed 11-17-80; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 375

[Docket No. RM80-65; Order No. 106]

Exemption From All or Part of Part I of the Federal Power Act of Small Hydroelectric Power Projects With an Installed Capacity of Five Megawatts or Less

Issued: November 7, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission adopts procedures to exempt from all or some of the requirements of Part I of the Federal Power Act, including licensing, small hydroelectric power projects with a proposed installed capacity of 5 megawatts or less. The final rule constitutes a means of evaluating such projects for exemption on a case-by-case basis and is the first action undertaken to implement section 408 of the Energy Security Act of 1980. The statute also gives the Commission discretion to exempt classes or categories of small hydroelectric power projects.

Only projects with a generating capacity of 5 megawatts or less, including new capacity that must be developed in order to qualify a project for exemption, may be exempted. These projects must utilize the water power potential of an existing dam or a natural water feature, without the need for a dam or impoundment. The rule sets forth who may apply for exemption, how to apply, and how any conflicts between an exemption application and any other kind of application to develop a project will be resolved.

The final rule is designed to encourage the development of small hydropower facilities by providing a method of relieving them from certain regulatory requirements.

EFFECTIVE DATE: November 7, 1980.

FOR FURTHER INFORMATION CONTACT:

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The Federal Energy Regulatory Commission (Commission) establishes procedures for exempting from all or part of Part I of the Federal Power Act (Act) certain small hydroelectric power projects (projects) having a proposed installed generating capacity of 5 megawatts or less. The rule implements in part section 408 of the Energy Security Act of 1980 (ESA).[1] The Commission will provide such exemptions based on case-by-case determinations and will consider further rulemakings to exempt classes or categories of projects, as permitted by section 408(b) of the ESA. The final rule is effective November 7, 1980.

I. Background

Title IV of the ESA, also known as the Renewable Energy Resource Act of 1980, contains a provision that amends the Public Utility Regulatory Policies Act of 1978 (PURPA) to authorize the Commission to exempt certain small hydroelectric power projects, on a case-by-case basis or by class or category of such projects, from all or part of Part I of the Act, including any licensing requirement.

Section 408 grants the Commission discretion to provide exemption under the following specified conditions. The proposed installed capacity of an exemptible project may not exceed 5 megawatts. To be exemptible, a project must utilize the water power potential of an existing dam, unless it is a project that will utilize a so-called "natural water feature" that does not require the creation of a dam or man-made impoundment. Such a natural water feature will commonly be an elevated lake or a waterway the topographical features of which permit diversion of some waters for purposes of power generation. Finally, section 408 provides that certain environmental requirements apply to those projects that the Commission exempts from licensing. Those requirements include the National Environmental Policy Act, the Fish and Wildlife Coordination Act, the

[1] Pub. Law 96-294, 94 Stat. 611. Section 408 of the ESA amends, *inter alia*, sections 405 and 408 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §§ 2705 and 2708).

Endangered Species Act, and the consultation provisions in section 30 of the Federal Power Act that apply to exemption of small conduit hydroelectric facilities.

The Notice of Proposed Rulemaking in this docket was issued for public comment on August 28, 1980.[2] Prior to issuing the proposed rule, the Commission issued a Notice of the Availability of a Draft Rule and of Informal Conferences.[3] Pursuant to that notice, the Commission's staff took informal comments on the draft rule and related inquiries and held informal conferences on them in Washington, D.C. on August 1, 1980 and August 12, 1980. In addition to requesting written comments on the rule as finally proposed, the Commission held a third public meeting to discuss the rule, on September 23, 1980. The comments, including transcripts of the three meetings, are available for inspection in the public files of the Commission.

This phase of the implementation of section 408 of the ESA utilizes case-by-case determinations based on information provided by individual applicants to provide exemptions for small hydroelectric power projects.[4] The Commission will exempt small hydroelectric power projects in much the same way it now exempts small conduit hydroelectric facilities.[5]

This exemption rule has several important features. First, only a person who has sufficient property interests to develop a small hydroelectric power project may apply for exemption. Second, a project owner may apply for exemption from licensing or from any of the other provisions of Part I of the Act, but application procedures for each of these two kinds of exemption differ. Third, all, but not part, of a currently licensed water power project is exemptible. Fourth, the rule explains in detail a system of priorities and preferences among the various kinds of applicants that seek to develop a project. Finally, an applicant may seek, consistent with the statute, waiver of any provision of the rule.

II. Comment Analysis

Two related issues received the most extensive commentary. The proposed rule permitted only a project owner, *i.e.*, someone with a real property interest sufficient to develop the project, to apply for exemption and provided that exemption applications timely filed will be preferred to applications for preliminary permit or, all other things being equal, for license. The proposed rule, had the effect of eliminating the preference that section 7(a) of the Act would afford a non-owner state or municipality that applies for a license or preliminary permit insofar as such applicant competes with an accepted application for exemption. Instead, the proposed rule provided project owners a priority over non-owners, regardless of state or municipal status.

Municipalities and associations of local public power systems oppose both the proposed abandonment of the statutory municipal/State preference in relation to the exemption process and the preference given to exemption applicants over non-owner license or permit applicants. The public power entities argue that States and municipalities that are not project owners are entitled to preferential treatment under the Act when competing with exemption applicants for the right to develop a site. They contend that in providing the Commission with the power to exempt certain projects from the Act, the Congress intended only to cut the red tape that accompanies licensing, not to establish a new system of priorities or preferences. These commenters assert that the preference is a controlling factor in dealing with any water power project within the Commission's jurisdiction, whether in an exemption context or not, and is not a licensing requirement from which a project may be exempted under section 408 of the ESA. They argue for the primacy of the licensing over the exemption process based on the safeguards they allege the former process to provide for the public interest. Licensing is to be supplemented by the exemption process, they say, only to the extent that licensing fails to encourage the development of a project. Based on this presumption, the American Public Power Association (APPA) proposes a procedure wherein any competition arising before the Commission between exemption applicants and license or permit applicants would convert the process to one for a permit or a license, with the municipal and State preferential rights under section 7(a).

The approach reflected in the proposed rule is supported by most of the private hydropower developers and investor-owned utilities. They claim that the statutory preference, as well as the threat of condemnation by a successful State or municipal licensee under section 21 of the Act, deters private developers from even identifying a site by applying for a permit or license. If the preference system were invoked under the proposed exemption rule, these commenters contend that it would also deter exemption applicants. The Congress did not prohibit the Commission from providing exemption from section 7(a) of the Act when it granted the Commission discretion to exempt projects "in whole or in part from the requirements (including the licensing requirements) of Part I" of the Act. One commenter cited changes in economic circumstances since the enactment of the preference as a basis for eliminating the preference, at least from the exemption process.

The Commission agrees that the legislative history of section 408 of the ESA does not address this issue; the statute is clear on its face, however. The Commission may choose to exempt any or all projects under 5 megawatts from the provisions of section 7(a) or any other requirement of Part I of the Act. Thus, the Commission may regard as equals all applicants that seek to develop a small hydroelectric power project, within the context of the exemption process, without regard to whether they are governmental entities or not. There are several important reasons for doing so. Moreover, when competitors are otherwise equal, there are good reasons for generally preferring the project owner.

The exemption authority was provided by the Congress to encourage small hydropower development. This will occur as a result of removing regulatory impediments where possible and by allowing market forces relatively free reign consistent with that purpose. In light of this objective, the Commission believes the national interest in encouraging development of a small renewable energy resource project with new or added capacity is more important than Federal Government control of who actually does it or who gains the immediate economic benefit.

APPA argues that, where competition for a site exists, an exemption is unnecessary; the exemption process is intended to encourage development of previously ignores sites, not necessarily or primarily to expedite development of known and usable sites. The Commission believes APPA's position misses several significant points. First, unless those persons with first-hand knowledge about available sites, frequently project owners, are encouraged to come forward with plans for development, the question of

[2] 45 Fed. Reg. 58368, September 3, 1980.

[3] 45 Fed. Reg. 49591, July 25, 1980.

[4] The Commission's staff is currently developing further rulemakings to implement the provision in section 408(b) of the ESA allowing the Commission to exempt "classes or categories" of projects, thereby obviating any application procedure.

[5] *See*, Order No. 76, 45 Fed. Reg. 28085, April 19, 1980.

competition will never arise with respect to much currently unexploited hydropower potential. Few non-public project owners will venture to formulate development plans and apply for exemption, if they would thereby expose their projects to taking facilitated by the municipal/State preference. Moreover, even where hydropower sites are known to be available for further development, speed of development would likely be sacrificed by undertaking a comparison of the relative merits of the applications submitted by public and private developers and by the inevitable conversion, under the APPA proposal, to a licensing proceeding at any time that a public entity that is not the project owner filed a competing application. Many years or experience in administering the Act show that cases involving competing applications take significantly longer to decide and demand more time and money from the perspective of developers. Thus, encouraging States and municipalities to file competing applications increases the institutional barriers to rapid hydropower development.

Other considerations support the Commission's decision not to apply section 7(a) to the exemption process. The procedures in the proposed and final rules do not prevent a state or municipality from developing a site. A non-owner public entity will be in at least as good a position as any other non-owner; it may still negotiate with the project owner for access to the project, whether by sale, lease, or other available contractual device. In other words, a state or municipality may do business like anyone else in order to obtain an interest sufficient to develop the site.[6] If that fails, the alternative of a condemnation proceeding under the state laws governing eminent domain is often available. A state or municipality that obtains the necessary property rights by purchase or condemnation may then obtain an exemption as the project owner. Or, as APPA itself pointed out, the state or municipality may often be able to condemn an exempted project under state law after it has been exempted. In fact, APPA acknowledged that the primary benefit of retaining the preference under section 7(a) would be that the state or municipal licensee would suffer less adverse political reaction by condemning a project under Federal law, as a licensee, than under state law.

Project owners, public or private, should be able to go forward expeditiously to develop small projects. The operation of a statutory preference should not be allowed to encourage competing applications by non-owners and infuse uncertainty into the development of small hydroelectric power plants and thereby defeat Congressional objectives. The Commission can most effectively use its authority under section 408 of the ESA by dealing only with persons that have the requisite property interests to bring new capacity on line as soon as possible.

Some commenters oppose the preference given project owners under the proposed rule. The proposed rule provided, under § 4.103, that exemption applications filed by project owners would be preferred to permit or license applications, if filed within the public notice period prescribed for the permit application, with some exceptions. Opponents point out that the statute says nothing about project owners, that non-owner private or public developers will be reluctant to file for a permit or license in light of the preference for exemption applicants, that some project owners may seek just to block development, and that speculation in hydropower sites may result from a rule that puts a premium on project ownership.

First, the Commission anticipates that, because of the project owner preference, in a few instances persons who are not project owners may indeed be dissuaded from applying for licenses or permits for projects which are recognized as ripe for further development. In most instances, however, the absence of an automatic preference for public developers, the lower likelihood of competition, the prospect of an exemption from licensing, and the new economic attractiveness of hydropower will be strong incentives for a previously reluctant owner to apply to develop a project. The more attractive development is economically, the more likely it is that market forces will lead a project owner to develop a project or a non-owner to make an offer that will induce the current owner to sell sufficient rights to render the non-owner an owner. Moreover, the exemption authority in the ESA is founded upon the presumption that more capacity will be developed sooner by means of exemption than by license. Therefore, in the interest of expeditious development, it makes sense not only to favor exemption applications over those for permits or licenses, but also generally to favor that class of persons more immediately capable of capitalizing on exemptions by undertaking to add or rehabilitate generating capacity—those who already own sufficient property interests.

It is important to note that, although project owners are in a more "favored" position than normally under the Act—in that they are subject only to market pressures and not to artificially created regulatory pressures—the final rule does not isolate the owner entirely from regulatory pressures. The final rule clarifies that a project owner will not obtain an exemption where a non-owner who was also a preliminary permittee has made timely application for a license. In addition, however, it provides that where a non-owner license applicant has filed first, the Commission will favor that application unless the plans of the subsequent exemption applicant would better develop the water power potential of the project. The final rule also allows a non-owner to file for a license after the exemption application, if it proposes a plan of power development that would render the project significantly better than any exemptible project.

The hierarchy of application preferences in § 4.104 balances the public interest in expeditious development under an exemption with some opportunity for non-owners to compete and propose more comprehensive development of a site. A permit application reflects an intent by the applicant only to study a site for development. A license application manifests both the plans and the capability for imminent development. Because exemption applications for projects 5 megawatts and less will be similar in content and imminence of development to license applications, they will be preferred to permit applications, just as license applications are preferred to permit applications (*see* § 4.33). Similarly, because the exemption applicant must be a person with sufficient real property interests in any non-Federal lands involved to develop a site immediately, the rule provides such applicants with advantages over license applicants who have no such property interests. For example, a first-filed exemption application will bar any license application, with the one limited exception noted above. Favoring a project owner will also tend to reduce the costs of litigation associated with competition for a power site and the transaction costs of transferring the project involuntarily from the owner to some other developer.

[6] The Commission also notes that this rule gives a state or municipality that is a project owner protections and preference against other interested states or municipalities that are non-owners, who might otherwise get a license for the project and condemn it under the Federal power of eminent domain.

One commenter advocated that no exemption application should be considered by the Commission if there is a previously filed license application. This approach was originally set forth in the draft rule. If a project owner failed to seek a permit or an exemption or license to develop a site, the price of that failure would be to risk loss of the site to a non-owner who first proposed development in a permit or license application. While this approach itself has not been adopted, the Commission recognizes that there is a problem. The Commission believes that the rule should not discourage interested non-owners who wish to exploit the full water power potential of a site in circumstances where the project owner does not take timely action to protect itself and develop the site adequately. Therefore, under § 4.104 the protection afforded the project owner has been restricted as follows: a project owner may not file for exemption for a project for which there is a preliminary permittee that files a timely application for license, *i.e.*, before the permit expires; even where there has been no permit, a non-owner license applicant will be preferred to an exemption applicant that files second and in competition with the license applicant, unless the plans of the exemption applicant would better develop the water power potential of the affected water resources; and a non-owner may file for a license in competition with an accepted exemption application, if the non-owner proposes significantly better power development that would make the project ineligible for exemption, *i.e.*, at least 7.5 megawatts, or 50% more capacity than the maximum allowed under the statute.

One commenter suggested that exemptions be limited to a term of 30 years. The final rule does not limit the term of exemptions; the Commission has chosen to grant exemptions in perpetuity, subject to standard conditions. A project with only a 30-year exemption would be virtually a licensed project by another name. The only considerations that would warrant reexamination of whether to continue the exemption for a project after a term of years are more appropriate for licensed projects or are, like the possibility of more comprehensive development, provided for under the scheme of exemption.

It was proposed that a project owner be given the latitude to apply for an exemption at any time up to final Commission action on a pending license or permit application or to convert a license application to an exemption application at any time before the license application is approved. The proposals have been rejected because they pose unreasonable burdens upon efficient administration of the permit, license, and exemption programs. To provide some certainty to the Commission, its staff, and other interested agencies and persons and to allow expeditious completion of proceedings, the nature of the proceeding and the participant must be fixed at a relatively early point. Therefore, the project owner is afforded only a limited time either to file in competition with a non-owner's application for a license or permit or to request that a license application be treated as one for exemption.

Numerous commenters opposed the exclusion of projects located on Federal lands from this case-by-case exemption process. The failure to include such projects was described as especially burdensome on project owners in the western United States, where a large portion of all land is Federally-owned and a high probability exists that a project will involve Federal land in some way, even if the dam and powerhouse, for example, are located on private property. Some commenters proposed deletion of the reference to Federal lands in the definition of "small hydroelectric power project," leaving project owners to negotiate access to Federal lands within one year. If rights to use public lands were not obtained, the procedure could then be changed to a licensing procedure. It was also suggested that the rule should exempt projects with only transmission lines on Federal lands or that any project on Federal lands leased for power purposes be made exemptible.

The Commission acknowledges the difficulty facing western developers with respect to this issue under the proposed rule. The Commission's concern is both to protect lands in the public domain and to permit development of projects that depend on such lands for power generation or distribution. In light of the comments, the Commission has lifted the proposed restriction relating to projects on Federal lands. The reference to Federal lands has been removed from the definition of "small hydroelectric power project." Projects that use Federal lands may therefore be exempted from any portion of Part I of the Act, subject to the new standard condition in Article 5 [§ 4.106(e)], which states that an exemption from licensing in no way confers any right to use or occupy Federal lands. Such rights must be obtained from the appropriate Federal land management agency. If the right to use any Federal lands involved is not obtained for the project within one year, the Commission may accept a license application for the project from any person to whom it is authorized to issue licenses under section 4(e) of the Act, and may revoke the exemption.

Although there was general approval for the Commission's decision not to use the broad definition of "project" in the Federal Power Act in establishing the scope of an exemptible facility, it was further suggested that, for purposes of exemption, a "project" be defined as an individual generation site, presumably the power-plant and appurtenant facilities. This would, of course, have the effect of preventing aggregation of the capacity of more than one powerhouse that uses water from the same impoundment for purposes of determining whether a project is within the 5 megawatt limitation. In those few cases where several small, independent power generating sites depend on a single impoundment, whether or not under license, a narrower definition would probably optimize the developmental impact of the exemption process. However, there are various practical difficulties in defining "project" solely in terms of a generation facility, without, among other things, encouraging applications that might attempt to circumvent the 5 megawatt statutory limitation; or failing to include the dam and impoundment in either an exempted project or a licensed project where the Commission could impose conditions on their use and maintenance—for environmental or dam safety reasons, for example. The Commission nevertheless recognizes the value, in some circumstances, of exempting certain sites that clearly are separate and distinct from other generating sites at the same dam and impoundment and has provided an opportunity for applicants to obtain waiver of the provisions that necessitate aggregation of all capacity at a single impoundment.

The definition of "small hydroelectric power project" includes run-of-river projects, a concern of two commenters. The 5 megawatt capacity limitation will not be applied only to capacity *added* to a project, as requested by another commenter. Such application of this statutory limitation would permit exemption of large projects based on a comparatively insignificant addition to capacity. That could be an unfortunate result from an environmental or safety perspective. It appears from the language of Title IV of PURPA, as amended by § 408 of the ESA, that

Congress intended to give the Commission authority to exempt small hydroelectric projects, as a whole, not small increments of capacity at large hydroelectric projects. In response to a related comment, the installation or increase in capacity that is required for a project to qualify for exemption does include replacement or rehabilitation of old capacity as well as adding increments of new capacity, so long as the project owner is proposing to develop capacity that was not previously being used. Although this was explained in the preamble to the proposed rule, a new definition of "install or increase" clarifies this position.

The proposed rule excluded from exemption any project that is part of a licensed project with more than one development or impoundment. Insofar as the licensing and relicensing of projects is concerned, the exemption from licensing of small portions of these larger projects will frequently produce some confusing results, such as how to apply and coordinate license and exemption conditions, especially in light of the limitation on license term and the possibility of competition for a new license. The Commission believes that a licensee may often be able to amend its license to accommodate the addition of a small generation facility with about the same filing obligations and waiting time as provided under the exemption process.[7] Two changes in the rule have evolved from consideration of this issue, however. First, the Commission will not accept an application for exemption from licensing of only a part of any licensed project. The entire licensed project may be exempted, if it is eligible for exemption under the rule. This limitation may of course be waived under § 4.103(d), if consistent with the statute in a particular case. Secondly, if a person applies for exemption from provisions other than licensing, that application should occur in relation to a license application or application for amendment of license. The rule therefore treats such applications differently from applications for exemption from licensing. Procedurally, they will be handled within the context of the licensing process. In addition, the form and content of the application will be significantly different, and much simpler, under § 4.108.

Commenters addressed various issues relating to project ownership and the question of who may apply for exemption. The argument made by some commenters (discussed above) that license applicants should be preferred to, or given consideration equal to, exemption applicants is offered in conjunction with a request that project owners not be preferred to non-owners, based on the fact that an exemption is arguably a special type of license to develop a project. Based on this assumption (which is incorrect, given the differences between license and exemption procedures, conditions, privileges, and responsibilities), it is argued that persons other than project owners should be able to obtain exemptions and that not to permit this will lead to the speculative acquisition of power sites.

The Commission continues to believe that of granting exemptions to persons who lack the requisite property interest to develop the site is generally likely to lead to confusion over the right of owners and non-owner exemption applicants. Moreover, an exemption is of little use to a non-owner, especially if the project owner is already a licensee or license applicant that seeks to develop the project under a different series of conditions and responsibilities. Any speculative activity that arises as a result of the value which the final rule places on project ownership ought to be regarded as an expected result of free market activity. If speculation is not accompanied by actual development of a site, the exemption may be revoked by the Commission under Article 3 which, as amended from the proposed rule, would also prevent the site from being exemptible for the following two years, thereby diminishing the economic attractiveness of being the project owner and failing to develop the project.

In conjunction with the modification of the proposed rule to accommodate Federal lands, the definition of "project owner" has been eliminated. the same concept appears in § 4.103(b), however, for circumstances involving all non-Federal lands or a mix of Federal and non-Federal. Where a project involves only Federal lands, there is no "project owner" of non-Federal lands affected, and thus the final rule allows any person to file for exemption of that kind of project.

In a related matter, the rule has also been revised with respect to who may apply for a license after an exemption is granted. As proposed, if the real property interests in non-federal lands necessary for development were split among two or more persons, only the combination of owners could apply for a license for the project in the first instance. In instances like changes in a joint venture that obtained exemption (such as an acrimonious falling out of partners) or splitting of unitary property interests to disparate persons (such as, through death and distribution), the proposed rule might have created an undue barrier to expeditious development. Thus, the final rule allows any person with any necessary real property interest in the non-Federal lands involved to apply for a license after an exemption has been granted. One commenter requested that a project owner who acquires a project after a license application is filed should be permitted to apply for exemption. If the new owner is not a former permittee and the public notice period has not expired, he may apply for exemption. If the former owner has already applied for exemption, that application may be amended to reflect the new owner as the applicant, just as permit or license applications are sometimes amended under § 1.11 of the Commission's regulations.

The question is raised about how conflicting claims of sufficient property rights would be resolved. The application for exemption from licensing requires evidence of ownership for that purpose. There is nothing unusual about the nature of such rights in the case of exemptions; they will range from fee title to rights-of-way to options to buy.[8] The proposed and final rules give examples of what constitutes project ownership. If there were no Federal licensing at all, the same ownership interests would have to be perfected to develop a site. Of course, a fee owner and a person with an option to buy would each qualify to file for exemption before the option is exercised. However, since the exemption attaches to the project and not the owner, any conflict that arose between the two would be left for private resolution, subject to the conditions of the exemption. But, a mistake about the sufficiency of an exemption applicant's property interests will not invalidate an exemption that has been granted. In addition, the problems that a project owner may face with respect to other kinds of regulatory

[7] The Commission will consider a rulemaking designed to extend most of the advantages of short-form license applications to all water power projects at existing dams with a total capacity of 5 megawatts or less. This would also be the form used to amend an existing license to include a facility of this size. The Commission has in the past completely processed such license amendments in as little as 3 months.

[8] Possession of state power of eminent domain is not an adequate substitute for ownership of non-Federal lands. The possibilities of bitter and lengthy condemnation litigation before development could go ahead and the 18-month limit on commencing construction portend too great a risk that exemptions in such circumstances would be wasted proceedings. An entity with state power of eminent domain may, of course, take the necessary interests and then apply for exemption.

approvals must be resolved outside the exemption process.

Article 2, in § 4.106(b), requires compliance with any conditions prescribed by fish and wildlife agencies. Commenters claim that this is a forfeiture of Commission responsibilities which will deter exemption applications. they request that the Commission prescribes lenient environmental conditions where appropriate or possible, eliminate Article 2 where state licensing procedures exist, or at least urge other agencies to make conditions minimal. Section 408 of the ESA, which incorporates part of section 30 of the Act, gives fish and wildlife agencies authority to establish binding exemption conditions for carrying out the purposes of the Fish and Wildlife Coordination Act. The Commission will not interpret the statute otherwise. However, it is for the Commission to insert the recommendations of those other agencies as conditions of an exemption. In order to provide a project owner with fair notice of the conditions imposed on the exempted project and to administer the exemption process efficiently, Article 2 requires compliance with fish and wildlife agency conditions that have been included with the applicant's Exhibit E or submitted directly by the agency within the time provided for comment.

One state agency posed several questions about environmental matters. A state need not intervene to participate in the environmental consultation process prescribed in Exhibit E. An applicant must supply evidence of the consultation which it must undertake with appropriate state and Federal agencies or the application will be considered patently deficient and rejected. In response to the request for a definition of critical habitat, the Commission notes that the U.S. Fish and Wildlife Service establishes and publishes a list of critical habitats in its regulations. Finally, the Commission will, as requested, provide a list of fish and wildlife agencies on request. Such a listing would be too cumbersome to include in the rule.

Two commenters argue that projects at "existing dams" include those at breached dams, no matter how badly breached a dam may be, and that the Commission should clarify this in the rule. Such projects should be made exemptible if the project owner proposes to reconstruct the dam, they say. The commenters point to section 408(a)(6) of PURPA which defines "existing dam" for purposes of small hydroelectric power projects as "any dam, construction of which was completed on or before April 20, 1977, and which does not require any construction or enlargement of impoundment structures (other than repairs or *reconstruction*) * * *." (Emphasis added.) One commenter states that the Department of Energy, in granting PURPA loans, considers this to have the effect of including among existing dams even badly breached dams. It is not clear that a dam so badly breached that nothing remains but abutments is an "existing dam." Section 408 (a)(1) of PURPA defines a small hydroelectric power project as one located "at the site of an existing dam", and this definition limits the scope of our authority to grant exemptions. The explanatory statement of the Conference Committee which accompanied the original Title IV of PURPA states that "the phrase 'at the site of an existing dam' should be strictly construed to mean at the site of an existing impoundment."[9] Badly breached dams will have no impoundment and an argument may be made that such dams do not qualify for the financial assistance program under Title IV. Whether Congress intended such dams to be excluded from exemption under the 1980 amendment to PURPA is unclear.

Several comments focused on the contents of the application under proposed § 4.106, now § 4.107. One commenter argued that exemption and license applications should be the same for small projects and another stated that the exemption application was too similar to a license application with respect to the information required. The Commission has held the amount of information required of exemption applicants to the minimum necessary to discharge its responsibilities under section 408 of the ESA and to determine a project's eligibility for exemption. The application is similar to, but has fewer filing requirements than, the short-form license application which may become applicable to any project of 5 megawatts or less at an existing dam. Of course, if a license is sought under Part I of the Federal Power Act, safety, comprehensive development, environmental, and engineering considerations generally necessitate a greater volume of data. Both in terms of the input and the end result, the exemption process is far simpler than the licensing process. The Director of the Division of Hydropower Licensing or any regional engineer will supply prospective applicants with an example of a completed exemption application, on request.

It is important to note that, unlike the proposed rule, the final rule provides two kinds of exemption applications in §§ 4.107 and 4.108. Exemptions from licensing will require submittal of data on a project's location, its structural and operational features, and its environmental impact. Exemption from provisions other than licensing require only identification of those provisions.

It was suggested that older dams be exempted from the requirements of Exhibit G to supply drawings of the project, because original drawings may no longer be available. The Commission will insist on such drawings, even if they have to be prepared anew, because they are essential to Commission evaluation of the projects's structural integrity.

If the developer varies its project design somewhat from that described in Exhibit A, the Commission will not revoke the exemption, as one commenter feared. Exhibit A is not submitted in order for the Commission to approve the design. As long as there is no new impoundment, capacity in excess of 5 megawatts, or radical change in construction that suggests a lack of good faith, the Commission will not be concerned, unless dam safety considerations make exemption from regulation otherwise unreasonable.

The Environmental Protection Agency (EPA) requests that Exhibit E contain analysis of flows downstream from any diversion structure and a request for state certification under section 401 of the Clean Air Act. Exhibit E now contains sufficient water resource data and analysis for interested agencies to evaluate the application. In addition, if no license is issued, there is no applicable section 401 requirement.

Some commenters claim that Article 3 did not allow an applicant sufficient time to begin construction, because of probable delays in power market negotiations, state approvals, consultation, and feasibility studies. The Commission has extended this time provision to 18 months to accommodate such potential difficulties. However, further extension would be contrary to the general purpose of the exemption process. The applicant must anticipate and solve these problems independently either before or during the time that it is seeking exemption, if necessary. In any case, revocation is not automatic under any term or condition of the rule. It should be pointed out that feasibility studies, delays from which concerned the Department of Energy, should not occur after the grant of an exemption, but are best performed before that time. An exemption application is, as noted

[9] H. R. Rep. No. 95-1750, 95th Cong., 2d Sess. 106 (1978).

earlier like a license application in terms of the stage of planning, investigation, and readiness to develop. The Commission will not require progress reports with respect to construction schedules because such enforcement mechanisms are more appropriate for licenses.

There are numerous miscellaneous comments to which a response would be useful.

1. EPA requests notice of any exemption application. EPA is already on a list of recipients for all permit, license, and exemption applications. EPA also requests an Exhibit E with such notice; the exhibit may be obtained from the applicant.

2. EPA argues that only projects operating in the run-of-river mode should be exempted; the Commission does not wish to prejudge the environmental impacts of projects that are not run-of-river. They will be considered on a case-by-case basis.

3. EPA advocates a standard term requiring that the instantaneous flow releases directly below the dam must equal or be greater than the seven consecutive day mean low flow within a 10 year recurrence. The Commission will entertain comments on appropriate flow released from EPA and other Federal and state agencies in individual cases under this case-by-case rule.

4. The 120-day automatic grant provision is too short to allow for proper safeguards from environmental problems, argues EPA; if an EA is required, EPA states that this time period should be suspended. The Commission expects that a satisfactory and complete environmental assessment of a project will occur within 120 days, in most cases. The statutory goal of expeditious development requires appropriately short deadlines. If necessary, the 120-day period may be suspended.

5. One commenter states that the Commission should exempt all projects 5 megawatts and less, leaving such projects to state regulation. The Commission is examining the extent to which a generic exemption should be granted, separately from this rule.

6. Although licenses for projects are transferrable from one licensee to another with Commission approval, no transfer provision is necessary for an exempted project. The exemption is for a project, not a person, and sale or other transfer of the project does not affect the exemption. No Commission approval of transfer is required. However, new project owners may wish to notify the Commission of the transfer of ownership for purposes of any later proceeding relevant to the exempted project; otherwise, any notices will only be published in the Federal Register and possibly a local paper and sent to the last known owner.

7. One commenter contended that no exemption application should be considered for one year after revocation of an existing exemption. This would arguably encourage development within the prescribed time by exposing the owner to a license application by a state or municipality, with preference. The Commission generally agrees, but adopts a two-year rule under standard Article 3.

8. One commenter would have the Commission dismiss an exemption application if water rights disputes arise. This would be an invitation for some parties to dispute water rights. As indicated above, any such disputes should be worked out at the state level.

9. Some commenters state the rule should address the issue of later, more comprehensive development plans and a procedure should be established to accommodate such proposals. The Commission will consider proposals to better develop the water resources of the region in a manner that may affect a previously exempted project. An exemption does not preclude later creation of another licensed project that contains, overlaps, or otherwise is mutually exclusive with an exempted project, subject to whatever compensation to property owners—including owners of the exempted project—may be necessary. The procedure to develop a waterway more comprehensively is licensing.

10. One comment indicated that an exemption can be used to circumvent the requirements and safeguards of licensing and that the Commission should ensure that an exemption applicant will significantly add to the project's capacity, recommending a 20 percent increase. The Congress intended to encourage "circumvention" of the licensing process, and imposed no prerequisite like a 20 percent increase in capacity or a showing that improvements would be uneconomical without the exemption. The Commission believes such restrictions would unduly restrict the availability of exemptions.

11. A state agency requested that much more time be allowed for the consultation process and that the rule impose a consultation fee. Since additional hydropower works to everyone's benefit, all agencies should cooperate to speed its development. The final rule does not extend the proposed deadline. Nor is a fee appropriate for performing consultations on exemption applications when no fee is required for consultations on license applications. An agency that does not believe the value to the public it serves warrants consultation on a particular case may decline to consult and comment on that case.

12. One commenter questioned whether the exemption amounted to a waiver of commission jurisdiction; another commenter quite correctly pointed out that the conditions of an exemption demonstrate that the Commission has continuing responsibility for a project, to some extent. We agree.

III. Section-by-Section Summary of the Rule

The rule applies to applications for exemptions of small hydroelectric power projects having a proposed installed generating capacity of 5 megawatts or less from all or part of Part I of the Act. A small hydroelectric power project is defined as a project that uses the water power potential of an existing dam or a natural water feature without need for a dam or man-made impoundment.

§ 4.101 *Purpose.*

This rule provides case-by-case exemption procedures.

§ 4.102 *Definitions.*

The proposed rule defines the term "project" more narrowly than does section (3)(11) of the Act. Neither the ESA nor PURPA defines "project". Under the final rule, a project would include only those facilities directly associated with a single man-made impoundment or a natural lake. Under section (3)(11) of the Act, a "complete unit of development" might include more than one impoundment and a series of hydraulically coordinated dams. As stated above, a project, as defined by this rule, is not exemptible from licensing requirements if it comprises only a part of any licensed project, as the term "project" is used in section (3)(11) of the Act, unless the licensee obtains waiver of this restriction under § 4.103(d). Because the definition of "project" in this rule is more circumscribed and therefore may include fewer generating units, eligibility for exemption will be greater than if "project" were construed to include all dams, impoundments, and powerhouses in a large coordinated unit of development. The scope of the definition of "project" is sufficiently broad to exclude from exemption any in a series of separately developed generation facilities that have an aggregate capacity in excess of 5 megawatts and that use the same impoundment. However, the final rule contains a waiver provision (§ 4.103(d)) that would

permit individual generation facilities to be exempted if waiver were granted.

If there is no lake or impoundment, "project" is defined in the rule to include the diversion structure and the facilities associated with it. However, a diversion structure that obstructs most of a natural body of water will be considered a dam, a distinction that bears on the physical scope of a project and the probable environmental impacts.

The statutory term "proposed installed capacity" is defined in the final rule to mean that an applicant must propose to add some new generating capacity at a project in order for the project to qualify for an exemption.

The definition of "install or increase," a phrase initially used in the definition of "small hydroelectric power project," states that this capacity includes proposals to install capacity where none existed previously, to replace or rehabilitate abandoned or unused existing capacity at a project, and to add capacity where there is existing operable capacity. The proposed installed capacity will be computed as the sum of both newly-developed capacity and existing capacity and may not exceed 5 megawatts in the aggregate.

This section also defines "dam," "existing dam," "Fish and wildlife agencies," "Federal lands," "non-Federal lands", "real property interests", "person," "qualified exemption applicant," and "qualified license applicant."

§ 4.103 General provisions.

Section 4.103 describes which projects the Commission may exempt from all or part of Part I of the Act. This section also places a limitation on exemption of portions of licensed projects. Without a waiver only an entire licensed project may be exempted, if otherwise eligible under other criteria. This section also contains a general waiver provision.

This section also states who may apply for exemptions. If only Federal lands would be used for development, anyone may apply for exemption from licensing. If any non-Federal lands would be necessary to develop and operate the project, only a person, or group of persons holding all of the real property interests necessary to develop and operate that project (such as ownership in fee, a leasehold, easement, right-of-way, or an option to obtain such interest) may apply for an exemption from licensing. This prevents a person who lacks the requisite non-Federal real property interests to develop the project from obtaining an exemption for another person's project.[7] The rule does not require that a person have such ownership interests in all of the land occupied by the entire project (*e.g.*, all of the lands for the impoundment) to be considered a qualified exemption applicant. A person need only possess interests in the project necessary to develop and operate hydroelectric power at the site.

§ 4.104 Relationships among applications, exemptions, permits, and licenses.

This section sets forth how exemptions from licensing and applications for exemption from licensing will be treated in relation to other kinds of applications relating to development of a project and any permits or licenses. Section 4.104 of the rule sets forth a system of priorities and preferences for persons who file to develop a site. Paragraph (a) establishes rules that apply when there is an outstanding license or permit for a project or when a permit or license application has been filed before the exemption application. Paragraph (c) prescribes what happens when a project is exempted or the project owner has applied for exemption before a license or permit application is submitted.

This section protects a person other than the project owner who has already applied for a permit or license, from being defeated by a project owner's untimely application for exemption from licensing. The Commission will accept an exemption application, or a notice of intent to submit one, that competes with a pending permit or license application only if it is submitted during the protest and intervention period prescribed in the public notice for the permit or license application. But the Commission will not accept an exemption application if a preliminary permittee has made timely application for license, even if the exemption application is submitted during the public notice period. Moreover, the Commission will not accept an application for exemption from licensing if a person other than the exemption applicant then has an unexpired preliminary permit or license.

This section also protects first-filing exemption applicants who own the non-Federal lands necessary for an exempt project from later permit or license applicants that would seek to take and develop the project. If an exemption application is pending, the Commission will not accept an application for a preliminary permit; nor will it accept a license application from a person other than the exemption applicant, unless the license application proposes total installed capacity of at least 7.5 MW. An exemption applicant may file a license application, but the exemption application will be deemed withdrawn and other interested persons may compete for the license. Similarly, any person owing non-Federal real property interests necessary to permit development of an exempted project may file a license application, but will then be exposed to competition by other interested developers, including municipalities with a preference under Section 7(a) of the Act.

A license applicant that is a qualified exemption applicant may request that its application for license be first considered as an application for exemption, if its license application was the first filed for the project. Such a request may be filed at any time during the period for filing protests and petitions for intervention prescribed in the public notice for its license application. A preliminary permit applicant that is a qualified exemption applicant may submit an exemption application during the public notice period for its permit application, if its permit application was the first filed for the project.

Paragraph (e) of § 4.104 contains noteworthy provisions about Commission treatment of applications that propose to develop the same project. An exemption application submitted in competition with an application for a preliminary permit will be preferred to the permit application. However, as between license applicants and exemption applicants, the Commission will favor the first-filed application unless the plans of the subsequent applicant would better develop the water power potential at the project.

Municipalities or other public entities that are not project owners and that apply for preliminary permits or licenses that compete with exemption applications will be governed by the same rules as other applicants for permits or licenses, and will not receive the preferential treatment provided under section 7(a) of the Act.

§ 4.105 Action on exemption applications.

Section 4.105 of the final rule contains the procedures and timing provisions for Commission action on an exemption application. If the application is for exemption from provisions other than licensing, the Commission will act in the

[7] Under Part I of the Federal Power Act and Part 4 of the Commission's regulations, a person need not have sufficient property interest to develop power at a site in order to obtain a preliminary permit or a license. However, property interests must always be perfected to develop a project.

context and according to the procedures for the related application for license or amendment of license. The procedures for exemption from licensing are provided in this section.

Once an application for exemption from licensing is submitted, the Commission will allow only 45 days for correcting deficiencies. The Commission may on its own motion, or on the motion of any party in interest, order a hearing on an application for exemption. Interested agencies will have 60 days to comment on an application. If an agency does not comment within the 60 days, that agency will be presumed to have no objection to the exemption requested. A non-responding fish or wildlife agency will be presumed to have no conditions to impose other than those specified in Exhibit E of the application. If the Commission does not act within 120 days of the notice that an application is accepted, it is automatically granted on certain standard conditions.

§ 4.106 Standard terms and conditions for exemption from licensing.

The rule specifies, in § 4.106, five standard conditions of every exemption. The installation of new capacity at the exempted project must begin within 18 months and completed within four years of the date of issuance of the exemption. Failure to begin or complete development of the project on a timely basis may lead to acceptance of license applications for the project and revocation of the exemption. These provisions are designed to prevent tying up the project site for an unreasonable time without development. Other standard conditions relate to the Commission's enforcement powers, compliance with conditions imposed by fish and wildlife agencies during the exemption process, and the navigation servitude of the United States to which all exempted projects on navigable waters remain subject. A fifth article is added to require the acquisition of rights to use any Federal lands involved from the administering Federal land management agencies within one year. If they are not obtained timely, the Commission may accept license applications for the project and revoke the exemption.

The Commission may provide further (non-standard) conditions in each exemption from licensing, based on the circumstances of the exemptible project, under § 4.105(b)(6). Among other things, Commission will be concerned about the safety of project works. For example, if a project contains a dam that is ten or more meters in height above streambed, impounds 2.5 million or more cubic feet of water, or is determined to have a high hazard potential, the Commission may require periodic inspection of the project by an independent consultant.[8]

§ 4.107 Contents of application for exemption from licensing.

The rule describes the required format and contents of the application for exemption from licensing in § 4.107. The application includes an introductory statement, which identifies the applicant and the project, as well as Exhibits A, B, E, and G. Exhibit A must include a description of the facility and the proposed mode of operation. Exhibit B is a general location map.

Exhibit E is an environmental report submitted to facilitate compliance with the National Environmental Policy Act of 1969. It also contains information to facilitate compliance with the National Historic Preservation Act, the Endangered Species Act, and the Fish and Wildlife Coordination Act.

Exhibit G is a set of drawings showing structures and equipment. These drawings will permit the Commission to review the project structures, existing and proposed, in order to understand their environmental and dam safety implications.

§ 4.108 Contents of application for exemption from provisions other than licensing.

Any applicant for exemption from selected parts of the Act other than the licensing requirements must submit a list of sections from which it seeks exemption, appended to an application for license or amendment of license.

Other amendments

The Commission also amends its regulations to delegate to the Director of the Office of Electric Power Regulation, or his designee, the limited authority to grant applications for exemptions from all or part of Part I of the Act, provided an environmental impact statement is not required, for small hydroelectric power projects or small conduit hydroelectric power projects.

IV. Effective Date

The Commission finds good cause to make this rule immediately effective.[9] The procedures established by this final rule provide the means for exemption of certain hydroelectric power projects from various statutorily imposed requirements. The rule therefore both "recognizes an exemption" and, at least potentially, "relieves a restriction." Given the determination of the Congress to encourage expeditious development of hydroelectric projects and the large numbers of preliminary permit and license applications being submitted to the Commission, an immediate effective date is in the public interest.

(Energy Security Act of 1980, Pub. L. 96-294, 94 Stat. 611; Federal Power Act, as amended, 16 U.S.C. §§ 792-828c; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §§ 2601-2645; and the Department of Energy Organization Act, 42 U.S.C. §§ 7101-7352; E.O. 12009, 3 CFR 142 (1978))

In consideration of the foregoing, the Commission amends Parts 4 and 375 of Chapter I, Title 18, Code of Federal Regulations, as set forth below, effective November 7, 1980.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. Part 4 is amended in the Table of Contents by adding Subpart K to read as follows:

Subpart K—Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less

Sec.
4.101 Purpose.
4.102 Definitions.
4.103 General provisions.
4.104 Relationships among applications, exemptions, permits, and licenses.
4.105 Action on exemption applications.
4.106 Standard terms and conditions of exemption from licensing.
4.107 Contents of application for exemption from licensing.
4.108 Contents of application for exemption from provisions other than licensing.

2. Part 4 is amended by adding Subpart K to read as follows:

Subpart K—Exemption of Small Hydroelectric Power Projects of 5 Megawatts or Less

§ 4.101 Purpose.

This subpart provides a procedure for obtaining exemption on a case-by-case basis from all or part of Part I of the Federal Power Act (Act), including

[8] These criteria are in Subpart D of the Commission's proposed Regulations Governing the Safety of Water Power Projects and Project Works, issued June 16, 1980, 45 *Fed. Reg.* 41608, June 19, 1980 (Docket No. RM80-31).

[9] Under the Federal Power Act (FPA), Commission action may take effect prior to the disposition of petitions for rehearing. (*See* § 313(c)) The Commission is of the view that the rehearing provisions contained in § 313 of the FPA apply to this rule due to the relationship of the exemption provision of PURPA to the licensing provisions of Part I of the FPA. Persons participating in this rulemaking should be aware that under § 313 of the FPA an application for rehearing is a jurisdictional prerequisite to obtaining judicial review.

licensing, for certain small hydroelectric power projects.

§ 4.102 Definitions.

For purposes of this subpart—

(a) "Dam" means any structure for impounding water, including any diversion structure that is designed to obstruct all or substantially all of the flow of a natural body of water.

(b) "Existing dam" means any dam, the construction of which was completed on or before April 20, 1977, and which does not require any construction or enlargement of impoundment structures (other than repairs or reconstruction) in connection with the installation of any small hydroelectric power project.

(c) "Fish and wildlife agencies" means the U.S. Fish and Wildlife Service, the National Marine Fisheries Service if anadromous or estuarine fish may be affected, and any state agency with administrative authority over fish or wildlife resources of the state or states in which the small hydroelectric power project is or will be located.

(d) "Federal lands" means any lands to which the United States holds fee title.

(e) "Non-Federal lands" means any lands other than Federal lands.

(f) "Real property interests" includes ownership in fee, right-of-way, easement, or leasehold.

(g) "Licensed water power project" means a project, as defined in section 3 (11) of the Act, that is licensed under Part I of the Act.

(h) "Project" means: (1) the impoundment and any associated dam, intake, water conveyance facility, power plant, primary transmision line, and other appurtenant facility, if a lake or similar natural impoundment or a man-made impoundment is used for power generation; or

(2) Any diversion structure other than a dam and any associated water conveyance facility, power plant; primary transmission line, and other appurtenant facility, if a natural water feature other than a lake or similar natural impoundment is used for power generation.

(i) "Person" means any individual and, as defined in section 3 of the Act, any corporation, municipality, or state.

(j) "Qualified exemption applicant" means any person who meets the requirements specified in § 4.103(b)(2) with respect to a small hydroelectric power project for which exemption from licensing is sought.

(k) "Qualified license applicant" means any person to whom the Commission may issue a license, as specified in section 4(e) of the Act.

(l) "Small hydroelectric power project" means any project in which capacity will be installed or increased after the date of application under this subpart and which will have a total installed capacity of not more than 5 megawatts and which:

(1) would utilize for electric power generation the water power potential of an existing dam that is not owned or operated by the United States or by any instrumentality of the Federal Government, including the Tennessee Valley Authority; or

(2) would utilize a natural water feature for the generation of electricity, without the need for any dam or man-made impoundment.

(m) "Install or increase" means to add new generating capacity at a site that has no existing generating units, to replace or rehabilitate an abandoned or unused existing generating unit, or to increase the generating capacity of any existing power plant by installing an additional generating unit or by rehabilitating an operable generating unit in a way that increases its rated electric power output.

§ 4.103 General provisions.

(a) *Exemptible projects.* Except as provided in paragraph (d), the Commission may exempt under this subpart any small hydroelectric power project from all or part of Part I of the Act, including licensing.

(b) *Who may apply.* (1) *Exemption from provisions other than licensing.* Any qualified license applicant or licensee seeking amendment of license may apply for exemption of the related project from provisions of Part I of the Act other than licensing.

(2) *Exemption from licensing.* (i) *Only Federal lands involved.* If only rights to use or occupy Federal lands would be necessary to develop and operate the proposed small hydroelectric power project, any person may apply for exemption of that project from licensing.

(ii) *Some non-Federal lands involved.* If real property interests in any non-Federal lands would be necessary to develop and operate the proposed small hydroelectric power project, any person who has all of the real property interests in non-Federal lands necessary to develop and operate that project, or an option to obtain those interests, may apply for exemption of that project from licensing.

(c) *Limitation for licensed water power project.* The Commission will not accept for filing an application for exemption from licensing for any project that is only part of a licensed water power project.

(d) *Waiver.* A qualified exemption applicant may petition under § 1.7 of this chapter for waiver of any specific provision of this subpart. The Commission may grant a waiver if consistent with section 408 of the Energy Security Act of 1980.

§ 4.104 Relationships among applications, exemptions, permits, and licenses.

For purposes of this subpart, the Commission will treat preliminary permit and license applications, preliminary permits, licenses, exemptions from licensing, and applications for exemption from licensing that are related to a small hydroelectric power project as follows:

(a) *Limitations on submission and acceptance of exemption applications.* (1) *Unexpired permit or license application.* If there is an unexpired preliminary permit or license in effect for a project, the Commission will accept an application for exemption of that project from licensing only if the exemption applicant is the permittee or licensee.

(2) *Pending permit or license application.* (i) *Pending permit application.* If a preliminary permit application for a project has been accepted for filing, an application for exemption of that project from licensing, or a notice of intent to submit such an application, may be submitted not later than the last date for filing protests or petitions to intervene prescribed in the public notice issued for the permit application under § 4.31(c)(2) of this chapter.

(ii) *Pending license application.* (A) *Submitted by permittee.* If an accepted license application for a project was submitted by a permittee before the permit expired, the Commission will not accept an application for exemption of that project from licensing submitted by a person other than the permittee.

(B) *Submitted by non-permittee other than qualified exemption applicant.* Except as provided in clause (A), if the first accepted license application for a project was filed by a person other than a qualified exemption applicant, an application for exemption from licensing, or a notice of intent to submit such an application, may be submitted not later than the last date for filing protests or petitions to intervene prescribed in the public notice issued for that license application under § 4.31(c)(2) of this chapter.

(C) *Submitted by qualified exemption applicant.* If the first accepted license application for a project was filed by a qualified exemption applicant, the applicant may request that its license application be treated initially as an

application for exemption from licensing by so notifying the Commission in writing and, unless only rights to use or occupy Federal lands would be necessary to develop and operate the project, submitting documentary evidence showing that the applicant holds the real property interests required under § 4.103(b)(2)(ii). Such notice and documentation must be submitted not later than the last date for filing protests or petitions to intervene prescribed in the public notice issued for the license application under § 4.31(c)(2) of this chapter.

(b) *Priority of exemption applicant's earlier permit or application.* Any accepted preliminary permit or license application submitted by a person who later applies for exemption of the project from licensing under paragraph (a)(2)(i) or (ii)(C) of this section retain its validity and priority under Subpart D of this part until the preliminary permit or license application is withdrawn or the project is exempted from licensing under this subpart.

(c) *Limitations on submission and acceptance of permit or license applications.* (1) *General rule.* Except as permitted under subparagraph (2) or under § 4.106(c) or (e), the Commission will not accept a preliminary permit or license application for any small hydroelectric power project if:

(i) That project is exempt from licensing, under this subpart; or

(ii) The Commission has accepted an application for exemption of that project from licensing and the application has not yet been granted or denied.

(2) *Exceptions.* (i) If the Commission has accepted an application for exemption of a project from licensing, any qualified license applicant may submit a competing license application that proposes to develop at least 7.5 megawatts in that project, or a notice of intent to file such a license application, not later than the last date for filing protests or petitions to intervene prescribed in the public notice of the application for exemption from licensing issued under § 4.31(c)(2) of this chapter.

(ii) If a project is exempted from licensing and real property interests in any non-Federal lands would be necessary to develop and operate the project, any person who is a qualified license applicant and has any of those real property interests in non-Federal lands may submit a license application for that project.

(iii) If the Commission has accepted an application for exemption of a project from licensing and the application has not yet been granted or denied, the applicant for exemption may submit a license application for that project if it is a qualified license applicant. The pending application for exemption from licensing will be considered withdrawn as of the date that the Commission accepts the license application for filing.

(iv) If a license application submitted under paragraph (c)(2)(ii) or (iii) of this section has been accepted for filing, any qualified license applicant may submit a competing license application in accordance with § 4.33 of this part.

(d) *Requirements for notices of intent and competing applications.* (1) *Competing exemption applications and notices of intent.* (i) Any notice of intent to file an application for exemption from licensing submitted under paragraph (a)(2)(i) or (ii)(B) of this section must conform to the requirements of § 4.33(b) of this chapter.

(ii) If a notice of intent is submitted under paragraph (a)(2)(i) or (ii)(B) of this section, the application for exemption from licensing must be submitted not later than 120 days after the last date for filing protests and petitions to intervene prescribed in the public notice issued for the permit or license application under § 4.31(c)(2) of this chapter.

(iii) Any notice of intent or application for exemption from licensing submitted under paragraph (a)(2)(i) or (ii)(B) of this section must be accompanied by proof of service of a copy of the notice of intent or exemption application on the permit or license applicant.

(2) *Competing license applications and notices of intent.*

(i) Any notice of intent to file a license application submitted under paragraph (c)(2)(i) must conform to the requirements of § 4.33(b) of this chapter and specify the capacity that the applicant proposes to install in the project.

(ii) If a notice of intent is submitted under paragraph (c)(2)(i), the license application must be submitted not later than 120 days after the last date for filing protests and petitions to intervene prescribed in the public notice issued for the exemption application under § 4.31(c)(2) of this chapter.

(iii) Any notice of intent or application for license submitted under paragraph (c)(2)(i) must be accompanied by proof of service of a copy of the notice or application on the exemption applicant.

(e) *Disposition of competing applications.* (1) *Exemption v. permit.* If an accepted application for a preliminary permit and an accepted application for exemption from licensing propose to develop mutually exclusive small hydroelectric power projects, the Commission will favor the application for exemption.

(2) *Exemption v. license.* If an application for a license and an application for exemption from licensing are each accepted for filing and each propose to develop a mutually exclusive project, the Commission will favor the application first filed, unless the Commission determines the plans of the subsequent applicant would better develop the water power potential of the affected water resources.

§4.105 Action on exemption applications.

(a) *Exemption from provisions other than licensing.* An application for exemption of a small hydroelectric power project from provisions of Part I of the Act other than the licensing requirement will be processed and considered as part of the related application for license or amendment of license.

(b) *Exemption from licensing.* (1) *General Procedure.* An application for exemption of a small hydroelectric power project from licensing will be processed in accordance with paragraphs (c) through (g) of § 4.31 of this part, except that notice will be published only once in a daily or weekly newspaper of general circulation in each county in which the project is or will be located. The additional time that may be allowed under § 4.31(d) of this part for correcting deficiencies in an application for exemption may not exceed 45 days.

(2) *Hearing.* The Commission may order a hearing on an application for exemption from licensing either on its own motion or on the motion of any party in interest. Any hearing shall be limited to the issues prescribed by order of the Commission.

(3) *Consultation.* The Commission will circulate a notice of application for exemption from licensing to interested agencies at the time the applicant is notified that the application is accepted for filing. If a particular agency does not comment within 60 days from the date of issuance of the notice, that agency will be presumed to have no comment on or objection to the exemption requested. Any comments submitted by a fish or wildlife agency must include any specific terms or conditions that the agency has determined are necessary to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the provisions of the Fish and Wildlife Coordination Act, except those terms or conditions that may be included in Exhibit E of the application for exemption submitted under § 4.107(e). Any fish or wildlife agency that does not comment within the 60-day period will be presumed to have determined that no terms or conditions of exemption are necessary for the above purposes, except the terms and

conditions included in Exhibit E of the exemption application.

(4) *Automatic exemption.* If the Commission has not taken one of the actions set forth in paragraph (b)(5) of this section within 120 days after notifying the applicant that its application for exemption from licensing is accepted for filing, exemption of the project, as proposed, will be deemed to be found consistent with the public interest and granted, on the standard terms and conditions set forth in § 4.106.

(5) *Affirmative action on exemption.* Within 120 days after notifying an applicant that its application for exemption from licensing is accepted for filing, the Commission may take any of these affirmative actions:

(i) Grant the exemption as requested;

(ii) Grant an exemption from provisions of Part I of the Federal Power Act (and the regulations issued under those provisions) other than those for which exemption was requested, upon finding that modification of the exemption requested is in the public interest;

(iii) Deny exemption if granting the exemption would be inconsistent with the public interest; or

(iv) Suspend the 120-day period for action under this paragraph, upon finding that additional time is necessary for gathering additional information, conducting additional proceedings, or deliberating on the issues raised by the application.

(6) *Non-standard terms and conditions.* In granting an exemption from licensing, the Commission any prescribe terms or conditions in addition to those set forth in § 4.106 in order to:

(i) Protect the quality or quantity of the related water supply;

(ii) Otherwise protect life, health, or property;

(iii) Avoid or mitigate adverse environmental impact; or

(iv) Better conserve, develop, or utilize in the public interest the water resources of the region.

§ 4.106 Standard terms and conditions of exemption from licensing.

Any exemption from licensing granted under this subpart for a small hydroelectric power project is subject to the following standard terms and conditions:

(a) *Article 1.* The Commission reserves the right to conduct investigations under sections 4(g), 306, 307, and 311 of the Federal Power Act with respect to any acts, complaints, facts, conditions, practices, or other matters related to the construction, operation, or maintenance of the exempt project. If any term or condition of the exemption is violated, the Commission may revoke the exemption, issue a suitable order under section 4(g) of the Federal Power Act, or take appropriate action for enforcement, forfeiture, or penalties under Part III of the Federal Power Act.

(b) *Article 2.* The construction, operation, and maintenance of the exempt project must comply with any terms and conditions that any Federal or state fish and wildlife agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the purposes of the Fish and Wildlife Coordination Act, as specified in Exhibit E of the application for exemption from licensing or in the comments submitted in response to the notice of the exemption application.

(c) *Article 3.* The Commission may accept a license application by any qualified license applicant and revoke this exemption if actual construction or development of any proposed generating facilities has not begun within 18 months, or been completed within four years, from the date on which this exemption was granted. If an exemption is revoked, the Commission will not acccept a susequent application for exemption within two years of the revocation.

(d) *Article 4.* This exemption is subject to the navigation servitude of the United States if the project is located on navigable waters of the United States.

(e) *Article 5.* This exemption does not confer any right to use or occupy any Federal lands that may be necessary for the development or operation of the project. Any right to use or occupy any Federal lands for those purposes must be obtained from the administering Federal land agencies. The Commission may accept a license application by any qualified license applicant and revoke this exemption, if any necessary right to use or occupy Federal lands for those purposes has not been obtained within one year from the date on which this exemption was granted.

§ 4.107 Contents of application for exemption from licensing.

(a) *General requirements.* (1) An application for exemption from licensing submitted under this subpart must contain the introductory statement and exhibits described in this section and, if the project structures would use or occupy any lands other than Federal lands, an appendix containing documentary evidence showing that the applicant has the real property interests required under § 4.103(b)(2)(ii) of this subpart. An application for exemption from licensing must conform to the requirements set forth in §§ 1.5 and 1.14 through 1.17 of this chapter.

(2) An original and fourteen copies of the exemption application must be submitted to the Secretary of the Commission, and a copy must be served at the same time on the Commission's regional engineer for the region in which the project is located and on each of the consulted fish and wildlife agencies. Full-sized prints of all required maps and drawings must be filed with the application. Maps and drawings need not conform to the requirements of § 4.32 of this part, but must be of sufficient size, scale, and quality to permit easy reading and understanding. The Commission will request original drawings (microfilm) when it notifies the applicant that the application is accepted.

(b) *Introductory statement.* The application must include an introductory statement that conforms to the following format:

Before the Federal Energy Regulatory Commission

Application for Exemption of Small Hydroelectric Power Project From Licensing

(1) [Name of applicant] applies to the Federal Energy Regulatory Commission for an exemption for [name of project], a small hydroelectric power project that is proposed to have an installed capacity of 5 megawatts or less, from licensuing under the Federal Power Act. [If applicable: The project is currently licensed as FERC Project No. ——.]

(2) The location of the project is:

[State or territory] ——————————

[County] ——————————

[Township or nearby town] ——————————

[Stream or body of water] ——————————

(3) The exact name and business address of each applicant are:

(4) The exact name and business address of each person authorized to act as agent for the applicant in this application are:

(5) [Name of applicant] is [specify, as appropriate: a citizen of the United States or other identified nation; an association of citizens of the United States or other identified nation; a municipality; a state; or a corporation incorporated under the laws of (specify the United States or the state or nation of incorporation, as appropriate)].

(c) *Exhibit A.* Exhibit A must describe the small hydroelectric power project and its proposed mode of operation. To the extent feasible, the information in this exhibit may be submitted in tabular form. The applicant must submit the following information:

(1) A brief description of any existing dam and impoundment proposed to be utilized by the small hydroelectric power project and any other existing or proposed project works and appurtenant facilities, including intake facilities, diversion structures, powerhouses, primary transmission lines, penstocks, pipelines, spillways, and other structures, and the sizes, capacities, and construction materials of those structures.

(2) The number of existing and proposed generating units at the project, including auxiliary units, the capacity of each unit, any provisions for future units, and a brief description of any plans for retirement or rehabilitation of existing generating units.

(3) The type of each hydraulic turbine of the small hydroelectric power project.

(4) A description of how the power plant is to be operated, that is, run-of-river or peaking.

(5) A graph showing a flow duration curve for the project or, if flow data are not available from United States Geological Survey records, the estimated average annual stream flow in cubic feet per second.

(6) Estimations of:

(i) the average annual generation in kilowatt-hours;

(ii) the average and design head of the power plant;

(iii) the hydraulic capacity of each turbine of the power plant (flow through the plant) in cubic feet per second;

(iv) the number of surface acres of the man-made or natural impoundment used, if any, at its normal maximum surface elevation and its net and gross storage capacities in acre-feet.

(7) The planned date for beginning and completing the proposed construction or development of generating facilities.

(8) A description of the nature and extent of any repair, reconstruction, or other modification of a dam that would occur in association with construction or development of the proposed small hydroelectric power project, including a statement of the normal maximum surface area and normal maximum surface elevation of any existing impoundment before and after construction.

(d) *Exhibit B.* Exhibit B is a general location map, which may be prepared on United States Geological Survey topographic quadrangle sheets or similar topographic maps of a state agency, enlarged, if necessary, to show clearly and legibly all of the information required by this paragraph. The map must show the following information:

(1) The location of the existing and proposed physical structures of the small hydroelectric power project, including any dam or diversion structure, reservoir or impoundment, penstocks, pipelines, power plants, access roads, transmission lines, and other important features.

(2) The relationship of the project structures to the stream or other body of water on which the project is located and to the nearest town or other permanent objects that can be readily recognized in the field.

(3) A description of who owns or otherwise has real property interests in any tract of land occupied by the small hydroelectric power project or the structures to which it is directly connected.

(e) *Exhibit E.* This exhibit is an environmental report that must include the following information, commensurate with the scope and environmental impact of the construction and operation of the small hydroelectric power project:

(1) A description of the environmental setting of the project, including vegetative cover, fish and wildlife resources, water quality and quantity, land and water uses, recreational uses, historical and archeological resources, and scenic and aesthetic resources. The report must list any endangered or threatened plant and animal species, any critical habitats, and any sites eligible for or included on the National Register of Historic Places. The applicant may obtain assistance in the preparation of this information from state natural resources agencies, the state historic preservation officer, and from local offices of Federal natural resources agencies.

(2) A description of the expected environmental impacts from the proposed construction or development and the proposed operation of the small hydroelectric power project, including any impacts from any proposed changes in the capacity and mode of operation of the project if it is already generating electric power, and an explanation of the specific measures proposed by the applicant, the agencies consulted, and others to protect and enhance environmental resources and values and to mitigate adverse impacts of the project on such resources.

(3) Letters or other documentation showing that the applicant consulted or attempted to consult with each of the relevant fish and wildlife agencies (specify each agency) before filing the application, including any terms or conditions of exemption that those agencies have determined are appropriate to prevent loss of, or damage to, fish or wildlife resources or otherwise to carry out the provisions of the Fish and Wildlife Coordination Act. If any fish or wildlife agency fails to provide the applicant with documentation of the consultation process within a reasonable time, in no case less than 30 days after documentation is requested, the applicant may submit a summary of the consultation and any determinations of the agency. Any exemption application that does not contain the information required in this subparagraph will be considered patently deficient and be rejected pursuant to § 4.31(d) of this part. The applicant may obtain a list of fish and wildlife agencies from the Director of the Division of Hydropower Licensing or any Regional Engineer.

(4) Any additional information the applicant considers important.

(f) *Exhibit G.* Exhibit G is a set of drawings showing the structures and equipment, that is, the proposed and existing project works, of the small hydroelectric power project. The drawings must include plan, elevation, and section views of the power plant, any existing dam or diversion structure, and any other principal structure of the project.

§ 4.108 Contents of application for exemption from provisions other than licensing.

An application for exemption of a small hydroelectric power project from provisions of Part I of the Act other than the licensing requirement need not be prepared according to any specific format, but must be included as an identified appendix to the related application for license or amendment of license. The application for exemption must list all sections or subsections of Part I of the Act for which exemption is requested.

PART 375—THE COMMISSION

3. Section 375.308 is amended by adding a new paragraph (11) to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation.

The Commission authorizes the Director of the Office of Electric Power Regulation, or the Director's designee, to:

* * * * *

(11) Grant or grant with modifications, but not suspend the time for action on or deny, any uncontested application

submitted under Subparts J or K of Part 4 of this chapter for exemption from all or part of Part I of the Federal Power Act, if an environmental impact statement is not required.

[FR Doc. 80-35940 Filed 11-17-80; 8:45 am]
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 5b

[T.D. 7736]

Foreign Earned Income Exclusion and the Deduction for Excess Foreign Living Costs

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the foreign earned income exclusion and the deduction for excess foreign living costs. Changes to the applicable tax law were made by the Foreign Earned Income Act of 1978. These regulations affect U.S. citizens and residents who work overseas and provide them with the guidance needed to comply with the law.

EFFECTIVE DATE: The regulations apply to taxable years beginning after December 31, 1977.

FOR FURTHER INFORMATION CONTACT: Martha E. Kadue of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T; 202-566-3289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations under section 911 of the Internal Revenue Code of 1954 relating to the foreign earned income exclusion. The final regulations under this section are necessary to conform the regulations under section 911 to section 202 of the Foreign Earned Income Act of 1978 (Pub. L. No. 95-615, 92 Stat. 3098). This document also contains final regulations under section 913 of the Code relating to the deduction for excess foreign living costs. Section 913 was enacted by section 203 of the Foreign Earned Income Act. In addition, this document contains final regulations under sections 953, 981, 1303, 6073 and 6081 to conform the regulations to changes made by the Foreign Earned Income Act. This document does not reflect changes made to the Code by the Technical Corrections Act of 1979.

On May 9, 1979, the Federal Register published proposed and temporary amendments to the Income Tax Regulations (26 CFR Parts 1 and 5b) under sections 911 and 913 of the Internal Revenue Code of 1954 (44 FR 27079). A public hearing was held on August 28, 1979. On December 31, 1979, the Federal Register published temporary amendments to the Income Tax Regulations (26 CFR Part 5b) under section 911 of the Internal Revenue Code of 1954 (44 FR 77155). After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

Explanation of Provisions

Section 911

Section 911 was amended by the Foreign Earned Income Act of 1978 to permit qualifying taxpayers who reside in a camp located in a hardship area in a foreign country to exclude annually up to $20,000 of foreign earned income. A taxpayer is not allowed a credit, however, for any foreign taxes paid or accrued on the excluded income. The regulations apply to taxable years beginning after December 31, 1978. They also apply to the taxable year beginning during 1978 of qualifying taxpayers who do not make an election pursuant to section 209(c) of the Foreign Earned Income Act to have prior law apply to that year. Prior law is section 911 as amended by section 1011 (a), (b), and (c) of the Tax Reform Act of 1976 and by section 701(u)(10) of the Revenue Act of 1978.

Section 913

Section 913, enacted by the Foreign Earned Income Act of 1978, allows to qualifying taxpayers with foreign tax homes a deduction which consists of the following amounts:

(1) A cost-of-living differential;
(2) Qualified housing expenses;
(3) Qualified schooling expenses;
(4) Qualified home leave transportation expenses; and
(5) A hardship area amount.

The section 913 deduction is a deduction from gross income and is limited to the amount of the taxpayer's foreign source earned income reduced by certain amounts. The deduction may not be claimed by a taxpayer who claims the section 911 exclusion.

Summary of Changes

Section 911

A number of revisions of the proposed regulations have been made by the final regulations, many in response to public comments. The amendments to the temporary regulations (26 CFR Part 5b) published by the Federal Register on December 31, 1979, are incorporated into the final regulations. Section 1.911-1(c)(1) sets forth the general definition of camp. A rule has been added, providing that two or more common areas or enclaves which house employees who work on the same project are considered to be one common area or enclave in determining whether the lodging accommodates 10 or more employees performing services at the taxpayer's worksite.

Section 1.911-1(c)(2) provides that lodging will be considered to be substandard if it is appreciably below the standard of housing typically occupied in the United States by individuals whose income equals the lesser of the median salary paid to American employees residing in the common area or the salary of an employee of the United States who is compensated at an annual rate paid for step 1 of grade GS-14. A list of facts and circumstances to be considered in determining whether lodging is substandard is provided. In addition a list of presumptions is provided.

Section 1.911-1(c)(3) provides a new definition of remote area which focuses on the availability of satisfactory housing. A list of facts and circumstances to be considered in determining whether an area is remote is provided. In addition a list of presumptions is provided.

Section 1.911-5(a)(3) provides a new formula for determining the amount of foreign taxes to be allocated to excluded earned income when such taxes cannot be specifically allocated to the excluded earned income.

Section 913

Section 1.913-3(a) of the proposed regulations provided that the abode of a taxpayer who spends 2 consecutive months in the United States is considered to be in the United States during that 2-month period in the absence of unusual circumstances. This provision has been deleted.

Section 1.913-3(b)(2) is amended to provide that when the taxpayer's tax home is in a hardship area, then living conditions will be considered to be adverse.

The proposed regulations contained rules that disqualified the taxpayer for parts of the section 913 deduction, *e.g.*, qualified cost-of-living differential (in § 1.913-5(b)(4)), qualified housing expenses (in § 1.913-6(b)(2)), qualified schooling expenses (in § 1.913-7(b)), and qualified transportation expenses (in

§ 1.913–8(b)(3)) if the taxpayer or the taxpayer's spouse is compensated in whole or in part by an allowance excludable from gross income under section 912 for items for which a deduction would otherwise be allowed for excess foreign living costs. These rules have been altered to provide for a reduction of, rather than disqualification from, the section 913 deduction by the amount of allowances excludable from gross income under section 912 which duplicate an item for which a deduction would otherwise be allowed for excess foreign living costs.

Section 1.913–5(d)(1) of the proposed regulations has been amended by the addition of a rule providing that a dependent may be considered to share the taxpayer's abode while boarding at a school if the expenses of room and board are not deducted as a qualified schooling expense.

Section 1.913–7(b)(2) of the proposed regulations provided that only that portion of a payment attributable to the school days in the taxable year may be claimed as a qualified school expense in that taxable year. This provision has been deleted and a new rule provides that the payment attributable to school days in an academic year may be claimed as school expenses in the taxable year in which the payments were made.

Section 1.913–8(b)(1) of the proposed regulations provided a limitation for purposes of determining qualified home leave transportation expense of one trip during each 12-month period abroad. The use of the word "during" limited home leave expense to only one trip in any given 12-month period abroad. Comments noted that the statute uses the language "one trip for each 12-month period." Comments assert that circumstances such as employer requirements that no home leave be taken until after 1 year of employment, requirements of schools and the need to travel at times of the year when economy flights are available may necessitate that home leave be taken at a particular time which is within the same 12 consecutive months that another home leave has been taken. Therefore this limitation has been revised. The new limitation is one trip for each 12-month period abroad. For example, a taxpayer resident of a foreign country for two years beginning January 1, 1980, and ending December 31, 1981, could take two home leave trips in 1981 for which amounts could be taken into account as qualified home leave travel expenses providing that no home leave trip for which amounts were taken into account as qualified home leave travel expenses was taken in 1980.

Drafting Information

The principal author of this regulation is Mary E. Dean of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the proposed amendments of the regulations 26 CFR Part 1 are adopted with the following revisions. In addition, 26 CFR Part 5b is deleted.

Paragraph 1. Section 1.911–1 as set forth in the notice of proposed rulemaking, is amended by deleting the penultimate sentence in paragraph (b) and adding in lieu thereof two new sentences, and by revising paragraph (c). The added and revised portions are set forth below.

§ 1.911–1 Individuals qualifying for the exclusion.

* * * * *

(b) *Taxpayers qualifying.* * * * However, a taxpayer who alternates his or her abode between the camp and some other location not in a camp is not considered to reside in the camp while at the other location. As an illustration, a taxpayer who lives and works for 30 days in the camp and then lives and works for 30 days outside a camp will not be considered to reside in the camp during the 30 days while living and working outside a camp. * * *

(c) *Camp*—(1) *In general.* A camp is lodging which is all of the following:

(i) Substandard;

(ii) Provided by or on behalf of the employer for the convenience of the employer because the place where the taxpayer renders services is in a remote area where satisfactory housing is not available to the taxpayer on the open market;

(iii) Located as near as practicable to, and in the vicinity of, the worksite of the taxpayer; and

(iv) Furnished in a common area or enclave which is not available to the general public for lodging or accommodations and which normally accommodates 10 or more persons who are either employees of the taxpayer's employer or other employees performing services at the taxpayer's worksite.

For purposes of paragraph (c)(1)(ii) of this section, the term "for the convenience of the employer" has the same meaning which it has for purposes of section 119. For purposes of paragraph (c)(1)(iv) of this section, a cluster of housing units is not a common area or enclave if it is adjacent to or surrounded by substantially similar housing available to the general public. For purposes of paragraph (c)(1)(iv) of this section, two or more common areas or enclaves which house employees who work on the same project (for example, a highway project) are considered to be one common area or enclave in determining whether they normally accommodate 10 or more employees performing services at the taxpayer's worksite.

(2) *Substandard lodging*—(i) *In general.* Lodging is considered to be substandard if, under all the relevant facts and circumsances, it is appreciably below the standard of housing typically occupied in the United States by individuals whose income equals the lesser of the median salary paid to American employees residing in the common area or the salary of an employee of the United States who is compensated at an annual rate paid for step 1 of grade GS–14. For purposes of this section, the salary of an employee is the amount required to be included in the income of the taxpayer as compensation. Relevant facts and circumstances which may indicate that lodging is substandard include (but are not limited to) the following:

(A) Inadequate living space;

(B) Lack of privacy occasioned by communal dining halls or other shared facilities;

(C) Temporary nature of the lodging, such as that inherent in prefabricated housing set in position on cinder blocks or housing consisting of movable units such as mobile homes, trailers, or portable camp facilities;

(D) An immediate environment that exposes the occupants of the housing to unsanitary or unhealthy conditions (for example, open sewers immediately adjacent to the housing) or to unusual risk of personal harm or property loss due to terrorism or civil unrest;

(E) Lack of improvements typically found in residential areas in the United States, such as paved and lighted streets, recreational areas, sewage facilities, and landscaping; or

(F) The cost per square foot of the lodging if constructed in the United States would be substantially less than the median cost per square foot to construct housing in the United States.

The general environment in which lodging is located (*e.g.*, the climate, prevalence of insects, etc.) does not of itself make lodging substandard. The general environment is relevant, however, if lodging is inadequate to protect the occupants from environmental conditions. The individual employee's income level is under no circumstances relevant to whether lodging is substandard. Thus, lodging occupied by a particular employee which is substantially inferior to the housing previously occupied by that individual in the United States is not substandard unless it is also substantially inferior to housing typically occupied in the United States by individuals whose income equals the lesser of the median salary paid to American employees residing in the common area or the salary of a GS–14, step 1, U.S. Government employee.

(ii) *Presumptions.* Lodging will generally be considered to be substandard if it consists of any of the following:

(A) Portable, temporary, or movable housing occupied by employees who are not accompanied by spouse or dependents, in

which the living space intended to be occupied by each employee is less than 250 square feet;

(B) Portable, temporary, or movable housing occupied by employees who are accompanied by spouse or dependents, in which the total interior living space intended to be occupied by a family unit is less than 800 square feet plus 200 square feet for each family member, other than the employee's spouse, who is expected to reside with the employee, and is no more than 1,200 square feet;

(C) Housing which lacks adequate and reliable heating or air conditioning if appropriate for the climate, or adequate and reliable utilities such as electricity or sewage facilities; or

(D) Housing which lacks private sleeping quarters for unrelated individuals, private bath or toilet facilities for unrelated individuals, or fresh hot and cold piped water.

Notwithstanding the fact that lodging is described in paragraph (c)(2)(ii) (A), (B), or (C), lodging will not be considered substandard if it is clearly not inferior to housing typically occupied in the United States by individuals whose income equals the lesser of the median salary paid to American employees residing in the common area or the salary of a GS–14, step 1, U.S. Government employee. For purposes of paragraph (c)(2)(ii) (A) and (B), living space does not include shared areas, such as dining halls, lavatories, or storage facilities which are used by unrelated employees. For purposes of paragraph (c)(2)(ii) (A) and (B), housing is not portable, temporary, or movable merely because it is prefabricated.

(iii) *Determination of median salary.* In determining the median salary of American employees residing in the common area, any reasonable method may be used. For example, the median salary may be determined by taking the average of the median salaries of American employees at the beginning and end of the calendar year.

(3) *Remote area.* Solely for purposes of section 911, a remote area is a place where satisfactory housing is unavailable to the taxpayer on the open market within a reasonable commuting distance of the place at which the taxpayer renders services.

(i) *Facts and circumstances.* Facts and circumstances to be considered in determining if satisfactory housing is unavailable within a reasonable commuting distance include (but are not limited to):

(A) The inaccessibility to available housing due to geographic factors or the quality of the roads;

(B) The number of housing units available on the open market within a reasonable commuting distance in relation to the number of housing units required for the employer's employees;

(C) The cost of housing available on the open market; or

(D) Terrorism or civil unrest present in the area where housing would be available which would subject U.S. citizens to unusual risk of personal harm or property loss.

(ii) *Presumptions.* Satisfactory housing will generally be considered to be unavailable to the employee on the open market if any of the following conditions is satisfied:

(A) The foreign government requires the employer to provide housing for its employees other than housing available on the open market;

(B) An unrelated person awarding work to an employer requires that the employer's employees occupy housing specified by such person; or

(C) The place at which the employee renders services is not within a reasonable commuting distance of a community with a population of 50,000 or more individuals.

The conditions of paragraph (c)(3)(ii) (A) and (B) are not fulfilled if the requirement described therein applies primarily to American employers or employers of American employees and there is a significant number of foreign employers or employees other than Americans.

Par. 2. Section 1.911–3, as set forth in the notice of proposed rulemaking, is amended by inserting in paragraph (b)(1) after the word "each" the word "entire".

Par. 3. Section 1.911–4, as set forth in the notice of proposed rulemaking, is amended by changing paragraph (c), Examples (1), (2) and (3) as set forth below.

§ 1.911–4 Treatment of community income.

* * * * *

(c) *Illustrations.* This section is illustrated by the following examples:

Example (1). B, a U.S. citizen and cash-basis taxpayer, qualifies for the section 911 exclusion for the entire 1981 taxable year. During 1981, B receives $40,000 compensation for services performed during that year in foreign country S. C, B's spouse and a U.S. citizen, is a resident of the United States during 1981 and receives no compensation during 1981. B's salary is considered community income under the law of state X, the state of residence of both spouses. If the income were not community income, $20,000 of the $40,000 received by B would be excluded from B's gross income. As a result, whether B and C file separate returns or a joint return, the aggregate amount excluded from their combined gross income is $20,000.

Example (2). The facts are the same as in example (1), except that C also qualifies for the section 911 exclusion for the entire 1981 taxable year. * * *

Example (3). B, a U.S. citizen and cash-basis taxpayer, qualifies for the section 911 exclusion for the entire 1981 taxable year. During 1981, B receives $40,000 compensation for services performed in foreign country X during that year. C, B's spouse and a citizen of country X, and B are both residents of country X during 1981. C receives $10,000 compensation for services performed during that year in country X. Under the law of country X one-half of B's earnings (or $20,000) belong to C and one-half of C's earnings (or $5,000) belong to B. * * *

Par. 4. Section 1.911–5, as set forth in the notice of proposed rulemaking, is amended by revising paragraphs (a) and (b) as set forth below.

§ 1.911–5 Disallowance of deductions and the foreign tax credit.

(a) *Deductions.* No deduction is allowed for any expenses (other than moving expenses), losses, or other otherwise deductible items definitely related (within the meaning of § 1.861–8) in whole or in part to earned income, to the extent they are properly apportioned (under the rules of § 1.861–8) to excluded earned income. Thus, if the taxpayer earns $60,000 of qualifying earned income during the taxable year, incurs $3,000 of otherwise deductible business expenses allocable to the entire $60,000, and excludes $20,000 of that income, $1,000 of the business expenses ($3,000×$20,000/$60,000) are not deductible, because they are apportioned to the excluded earned income of $20,000. Deductions which are not definitely related to qualifying earned income are deductible to the extent allowed by chapter 1 of the Code. Examples of deductions that are not definitely related are personal and family medical expenses, real estate taxes and mortage interest on a personal residence, charitable contributions, and deductions for personal exemptions. In the case of a taxpayer engaged in trade or business in which both personal services and capital are material income-producing factors, the deductions definitely related and properly apportioned to qualifying earned income are determined by multiplying the deductions definitely related and properly apportioned to the profits of such trade or business by a fraction, the numerator of which is qualifying earned income and the denominator of which is the profits of such trade or business.

(b) *Foreign taxes.* No deduction or credit is allowed for foreign income, war profits, or excess profits taxes paid or accrued with respect to excluded earned income. To determine the amount of disallowed taxes, multiply the tax imposed on earned income by a fraction the numerator of which is excluded earned income less deductible expenses definitely related in whole or in part to earned income, to the extent they are properly apportioned to excluded earned income (see § 1.911–5(a)), and the denominator of which is earned income less deductible expenses allocable to earned income. If the tax on earned income is imposed under foreign law on earned income and on some other amount (for example, some other type of income or an amount not subject to tax in the United States), the denominator equals the total of the amounts subject to the tax less deductible expenses allocable to all such amounts.

The following examples illustrate the determination of foreign income taxes paid or accured with respect to excluded earned income.

Example (1). A, a U.S. citizen and cash=basis taxpayer, qualifies for the section 911 exclusion for the entire 1981 taxable year as a bona fide resident of foreign country X. For 1981, A pays $10,000 in income tax to country X. The $10,000 tax is imposed after reduction for allocable expenses and personal deductions not allocable to any particular items of income, on the following amounts: $40,000 received in 1981 for services performed during that year; and $9,000 of unrealized capital gains with respect to stock and other securities owned by A. Of the $40,000 of earned income,

$35,000 is qualifying earned income under § 1.911–2; the remaining $5,000 does not qualify for the section 911 exclusion because it is received for services performed in the United States. A incurred $4,000 of expenses which are deductible and allocable to A's earned income. A excluded $20,000 of qualifying earned income from gross income for 1981. The $9,000 of unrealized capital gains is not subject to tax in the United States. In addition to the $10,000 tax on the above amounts, A pays a separate tax to country X of $800 on $8,000 of interest received during 1981. The amount of country X tax which is properly apportioned to excluded earned income (and, therefore, not deductible or creditable) equals $4,000, which is determined by multiplying the tax of $10,000 by the following fraction:

$18,000 ($20,000 excluded earned income less $2,000 of deductible expenses allocable to excluded income)

$45,000 ($40,000 of earned income less $4,000 of deductible expenses plus $9,000 unrealized capital gains)

The separate $800 tax imposed on interest income is not apportioned in part to the excluded earned income, and the interest income is disregarded for purposes of apportioning the $10,000 tax.

Example (2). A, a U.S. citizen and cash-basis taxpayer, qualifies for the section 911 exclusion for the entire 1981 taxable year as a bona fide resident of foreign country X. In 1981, A receives $50,000 of qualifying earned income for services performed during that year and excluded $20,000 of that income from gross income. Of the $50,000 received by A, $30,000 is for services performed in country X, and $20,000 is for services performed in country Y. Country Y does not tax A's income. Country X imposes a tax of $3,000 on the $30,000 received for services in country X but does not tax A's income received for services in country Y. The $20,000 exclusion is allocated on a pro rata basis between the portion of qualifying earned income subject to tax in country X and the portion not subject to tax. Thus, $12,000 ($20,000 exclusion X $30,000/$50,000) of the $30,000 subject to tax in country X is considered excluded under section 911. The amount of country X tax which is properly apportioned to excluded earned income equals $1,200, which is determined by multiplying the tax of $3,000 by the following fraction:

$12,000 (excluded earned income subject to country X tax)

$30,000 (income subject to country X tax)

Par. 5. Section 1.913–2, as set forth in the notice of proposed rulemaking is revised by deleting from the last sentence of § 1.913–2 (a) the following phrase: "and each spouse has a different tax home which is not within a reasonable commuting distance of the other spouse's tax home."

Par. 6. Section 1.913–3, as set forth in the notice of proposed rulemaking, is revised by changing paragraphs (a), (b)(2), (e), and (f) as set forth below.

§ 1.913–3 General definitions.

(a) *Tax home.* For purposes of section 913 and the regulations thereunder, the term "tax home" has the same meaning which it has for purposes of section 162(a)(2). An exception to the general rule is that a taxpayer shall not be considered to have a tax home in a foreign country for any period for which the taxpayer's abode is in the United States. For example, a taxpayer who lives in Detroit, Michigan, but commutes daily to work in Windsor, Ontario, would ordinarily have his or her tax home in Windsor but nevertheless would be ineligible for the deduction for excess foreign living costs. Temporary presence of the taxpayer in the United States does not necessarily mean that the taxpayer's abode is in the United States during that time.

(b) Qualified second household—

* * * * *

(2) *Adverse living conditions.* Adverse living conditions are living conditions which are dangerous, unhealthy, or otherwise adverse. If a taxpayer's tax home is in a hardship area (defined in paragraph (e) of this section), living conditions will be considered to be adverse. Adverse living conditions include a state of warfare or civil insurrection in the general area of the taxpayer's tax home. Adverse living conditions exist if the taxpayer's abode is on the business premises of the employer for the convenience of the employer and, because of the nature of the business (for example, a construction site or drilling rig), it is not feasible to provide family housing. The criteria used by the U.S. Department of State in granting a separate maintenance allowance are relevant but not determinative for purposes of determining whether a separate household is provided because of adverse living condition.

* * * * *

(e) *Hardship area.* A hardship area is any place in a foreign country (defined in paragraph (d) of this section) which is designated by the Secretary of State as a place where living conditions are extraordinarily difficult or notably unhealthy, or where excessive physical hardships exist, and for which a post differential of 15 percent or more would be provided under section 5925 of Title 5 of the U.S. Code to any officer or employee of the U.S. Government present at that place. Taxpayers who wish to apply for a hardship area determination must apply to the State Department Allowances Staff, Department of State, Washington, D.C. 20520.

(f) *Reasonable commuting distance.* For purposes of sections 911 and 913, a reasonable commuting distance is a distance which is capable of being traveled safely and regularly by customarily available transportation, including privately owned vehicles, in 1 hour.

Par. 7. Section 1.913–4, as set forth in the notice of proposed rulemaking, is revised by changing paragraph (a) as set forth below.

§ 1.913–4 Foreign source earned income limitation.

(a) *In general.* The deduction allowed under section 913 may not exceed foreign source earned income reduced by the portion of definitely related deductions (within the meaning of § 1.861–8), other than the deduction allowed by section 913, that is properly apportioned to such income. For purposes of this section deductions that are not definitely related, such as personal and family medical expenses, real estate taxes, mortgage interest on a personal residence, charitable contributions, and deductions for personal exemptions do not reduce foreign source income.

* * * * *

Par. 8. Section 1.913–5, as set forth in the notice of proposed rulemaking, is changed as set forth below.

1. Paragraph (a) is revised as set forth below.

2. Paragraph (b) is revised as set forth below.

3. Paragraph (d)(1) is revised as set forth below.

4. Paragraph (e)(2) is revised by deleting the phrase "paragraph (b)(3) of this section does not apply. Thus."

5. Paragraph (e)(3) is revised as set forth below.

§ 1.913–5 Cost-of-living differential.

(a) *In general.* The cost-of-living differential for an entire taxable year is the amount specified in tables issued annually by the Internal Revenue Service for the taxpayer's tax home and family size multiplied by the following fraction:

Number of qualifying days

Number of days in the taxable year

The amount which is the cost-of-living differential must be reduced (but not below zero) by the amount of any military or section 912 allowance excludable from gross income of the taxpayer or the taxpayer's spouse which is intended to compensate the taxpayer in whole or in part for the cost-of-living of the taxpayer's household (or of a qualified second household).

(b) *Qualifying days.* The number of qualifying days is the total number of calendar days in the taxable year during which the taxpayer's tax home is in a foreign country and the taxpayer qualifies under § 1.913–2(a) for the section 913 deduction, excluding days for which both meals and lodging are furnished to the taxpayer and the value of both is excluded from the taxpayer's gross income under section 119.

* * * * *

(d) *Family size*—(1) *In general.* In determining family size, the family includes only the taxpayer and any spouse and dependents who share the taxpayer's abode. A dependent may be considered to share the taxpayer's abode while boarding at a school only if the expenses of room and board are not deducted as qualified schooling expenses. In addition, no person is considered to share the taxpayer's abode during any days for which both meals and lodging are furnished to that person and the value of both is excluded under section 119. If family size varies during any period within the taxable year during which the taxpayer has a particular foreign tax home, a separate cost-of-living amount must be computed for each

portion of that period during which the family size is different. An exception to this general rule is that a dependent who is born during a taxable year is considered to be a family member for the entire taxable year. Those amounts must then be aggregated to determine the cost-of-living differential for the taxable year.* * *

(e) *Special rules for qualified second household.* * * *

(3) *Family size.* Family size is determined as provided in paragraph (d) of this section, except that the family includes only the spouse and any dependents whose abode is the qualified second household. Regardless of whether the taxpayer is actually present in the qualified second household, the taxpayer is considered a family member except during days for which both meals and lodging are furnished to the taxpayer and the value of both is excluded under section 119.

Par. 9. Section 1.913–6, as set forth in the notice of proposed rulemaking, is changed as set forth below.

1. Paragraph (a) is revised as set forth below.

2. Paragraph (b)(1) and (2) are revised as set forth below.

3. Paragraph (d)(3)(i) is revised as set forth below.

4. Paragraph (e), Example (1) is revised by deleting the word "furnishes" and inserting in its place the word "provides" and in the same sentence inserting the phrase "owned by the employer" after the word "housing" and in the same sentence inserting the word "rental" after the word "market."

5. Paragraph (e), Example (3) is revised as set forth below.

§ *1.913–6 Qualified housing expense.*

(a) *In general.* The amount of qualified housing expenses equals the reasonable housing expenses incurred by or on behalf of the taxpayer and any spouse and dependents who share the taxpayer's abode less the taxpayer's base amount. The amount of qualified housing expenses must be reduced, however, by the amount of any allowance excludable from gross income under section 912 which is intended to compensate in whole or in part for the expenses of housing located within a reasonable commuting distance of the taxpayer's tax home. Any amount required to be included in income of the taxpayer as compensation attributable to housing provided to the taxpayer shall be considered incurred on behalf of the taxpayer for housing in a foreign country.

(b) *Housing expenses*—(1) *In general.* Housing expenses include rent, utilities (other than long distance telephone charges), real and personal property insurance, occupancy taxes not described in paragraph (b)(1)(v) of this section, nonrefundable fees paid for securing a leasehold, rental of furniture and accessories, residential parking, and repairs. Housing expenses do not include—

(i) The cost of house purchase, improvements, and other costs which are capital expenditures;

(ii) The cost of purchased furniture or accessories or domestic labor (maids, gardeners, etc.);

(iii) Amortized payments of principal with respect to an evidence of indebtedness secured by a mortgage on the taxpayer's housing;

(iv) Depreciation of housing owned by the taxpayer, or amortization or depreciation of capital improvements made to housing leased by the taxpayer, or

(v) Interest and taxes deductible under sections 163 and 164 or other amounts deductible under section 216(a).

(2) *Limitation.* Housing expenses are taken into account for purposes of this section only to the extent that they are attributable to housing for portions of the taxable year during which—

(i) The taxpayer's tax home is in a foreign country;

(ii) The value of the taxpayer's housing is not excluded under section 119; and

(iii) The taxpayer qualifies under § 1.913–2(a) for the section 913 deduction. In addition, except as provided in paragraph (d)(1) of this section relating to qualified second households, if the taxpayer maintains more than one foreign abode at the same time, housing expenses are to be taken into account only to the extent that they are incurred with respect to the abode which bears the closest relationship (not necessarily geographic) to the taxpayer's tax home.

* * * * *

(d) *Special rules for qualified second households.* * * *

(3) *Qualified housing expenses for the qualified second household*—(i) *Expenses.* In determining under paragraph (b) of this section the housing expenses relating to the qualified second household, the limitation of paragraph (b)(2)(ii) of this section does not apply, so that housing expenses may include those incurred for housing during portions of the taxable year during which the value of the taxpayer's housing at the taxpayer's tax home is excluded under section 119. In addition, the words "qualified second household" are substituted for "taxpayer's tax home" in paragraph (a) of this section. Thus, the amount of qualified housing expenses need not be reduced by the amount of any allowance excludable under section 912 for the expenses of housing located at the taxpayer's tax home, but must be reduced by the amount of any military or section 912 allowance excludable from gross income which compensates the taxpayer or the taxpayer's spouse in whole or in part for the expenses of housing at the location of the qualified second household.

* * * * *

(e) *Illustrations.* * * *

Example (3). The facts are the same as in example (1), except that there is no qualified second household, the cost-of-living differential specified in the 1980 cost-of-living table for country F (the location of B's tax home) is $3,000, and town X is located in a hardship area. The base housing amount for housing at B's tax home equals $6,000—20 percent of $30,000 ($48,000 worldwide earned income less the $3,000 cost-of-living differential, the $10,000 living expenses and the $5,000 hardship area differential). Thus, the amount of B's qualified housing expenses equals $4,000. Although B's tax home is located in a hardship area, B cannot claim as qualified housing expenses the full value of the housing provided at B's tax home, since B does not maintain a qualified second household.

Par. 10. Section 1.913–7, as set forth in the notice of proposed rulemaking, is changed as set forth below.

1. Paragraph (b) is revised as set forth below.

2. Paragraph (d) is revised by deleting the phrase "In addition, a" and inserting in its place "A" and by adding at the end three sentences as set forth below.

§ *1.913–7 Qualified school expenses.*

* * * * *

(b) *School expenses*—(1) *In general.* School expenses include tuition, fees, the cost of books, other amounts required by the school such as uniforms, and the cost of local transportation. Optional expenses, such as the cost of optional field trips or extracurricular activities, are not school expenses. If an adequate U.S.-type school is not available within a reasonable commuting distance (defined in § 1.913–3(f)) of the taxpayer's tax home, the expenses of room and board for the dependent and the cost of transportation between the school and the taxpayer's tax home at the beginning and end of the school year and during vacation periods are also school expenses. The cost of transportation includes transfer costs to and from the airport, airport taxes, exit fees or nonrefundable deposits made in order to leave the country, meals in route, and costs of involuntary stopovers in route. The cost of transportation does not include the costs of voluntary stopovers in route.

(2) *Limitation.* School expenses are qualified school expenses only to the extent that—

(i) They are not expenses for which a credit is claimed pursuant to section 44A (relating to child care) or for which a deduction is claimed pursuant to section 213 (relating to medical expenses);

(ii) They are not expenses for which the taxpayer or the taxpayer's spouse is compensated by an allowance such as the "school away from post" education allowance which is excluded from gross income under section 912;

(iii) They are attributable to education during a period in which the taxpayer's tax home is in a foreign country and the taxpayer qualifies under § 1.913–2 (a) for the section 913 deduction; and

(iv) They are attributable to education during a period in which the dependent resides with the taxpayer at the taxpayer's tax home or in a qualified second household.

* * * * *

(d) *Availability and adequacy.* * * * In addition, a school is not adequate if it is under religious auspices which require religious training or infuse religious training in secular courses and the taxpayer does not send the dependent to another school under the same religious auspices. A school will be considered adequate even though it does not offer enrichment programs, if such programs would not ordinarily be offered in public elementary or secondary schools in the

United States. Examples of such enrichment programs are a swimming team or orchestral training.

Par. 11. Section 1.913–8, as set forth in the notice of proposed rulemaking is changed as set forth below.

1. Paragraph (a) is revised by deleting the last sentence and adding in its place two sentences as set forth below.

2. Paragraph (b)(1) is revised as set forth below.

3. Paragraph (b)(2) is revised by deleting the phrase "lives either with the taxpayer (that is, shares the taxpayer's abode)" and by deleting the last sentence and the parenthetical "(See § 1.913–7(b)(2)(ii))."

4. Paragraph (b)(3) is revised as set forth below.

§ 1.913–8 Qualified home leave transportation expenses.

(a) *In general.* * * * Qualified transportation expenses include transfer costs to and from the airport, airport taxes, exit fees or nonrefundable deposits made in order to leave the country, meals in route, and the costs of involuntary stopovers in route. The cost of transportation does not include the costs of voluntary stopovers in route.

(b) *Limitations*—(1) *One trip for each 12-month period abroad.* Qualified transportation expenses include the cost of no more than one round trip per person for each period of 12 consecutive months (which do not overlap) during which—

(i) The taxpayer's tax home is in a foreign country; and

(ii) The taxpayer qualifies under § 1.913–2 (a) for the section 913 deduction.

The trip can occur before completion of a 12-month period.

* * * * *

(3) *Double benefits denied.* Qualified transportation expense for each period of 12 consecutive months must be reduced by the amount of any allowance which is granted to the taxpayer or the taxpayer's spouse for purposes of home leave transportation at any time during that period of 12 consecutive months and which is excluded from gross income under section 912.

Par. 12. Section 1.913–9, as set forth in the notice of proposed rulemaking, is changed as set forth below.

1. Paragraph (a) is revised by adding the phrase "for an entire taxable year" after the word "amount."

2. Paragraph (b) is revised by adding at the end thereof the following sentence: "Taxpayers who wish to apply for a hardship area determination must apply to the State Department Allowances Staff, Department of State, Washington, D.C. 20520."

Par. 13. Section 1.913–10, as set forth in the notice of proposed rulemaking, is revised by deleting the word "during" the first time it appears in paragraph (e) and inserting in its place the word "for."

Par. 14. Section 1.913–13, as set forth in the notice of proposed rulemaking, is changed by deleting the third and fourth sentences.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805) and, in part, under the authority contained in section 913(m) of the Code (92 Stat. 3106; 26 U.S.C. 913(m)).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: October 10, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

Paragraph 1. Sections 5b.911–1 through 5b.911–7 are deleted, and the following §§ 1.911–1 through 1.911–7 are adopted.

Sec.

1.911–1 Individual qualifying for the exclusion.
1.911–2 Qualifying earned income.
1.911–3 Determination of the maximum excludable amount of qualifying earned income.
1.911–4 Treatment of community income.
1.911–5 Disallowance of deductions and the foreign tax credit.
1.911–7 Effective date of 1.911–1 through 1.911–6.

§ 1.911–1 Individuals qualifying for the exclusion.

(a) *Scope.* Section 911 provides that a qualifying taxpayer may exclude from gross income qualifying earned income described in § 1.911–2. The amount that may be excluded is subject to the limitation provided in § 1.911–3. Taxpayers may make an election under § 1.911–6(a) not to claim the benefit of section 911.

(b) *Taxpayers qualifying.* A taxpayer qualifies for the exclusion provided by section 911 if the taxpayer resides in a camp located in a hardship area and satisfies either the foreign residence test or the physical presence test of § 1.913–2(a) (1) and (2). A taxpayer is considered to reside in a camp only for portions of the taxable year during which the taxpayer's abode is in a camp. A taxpayer who is away from a camp for short periods of time may still be considered to reside in the camp during those periods of absence. As an illustration, a taxpayer living in a camp who spends weekends or takes periodic vacations of short duration away from the camp may be considered to reside in the camp during those periods of absence. However, a taxpayer who alternates his or her abode between the camp and some other location not in a camp is not considered to reside in the camp while at the other location. As an illustration, a taxpayer who lives and works for 30 days in the camp and then lives and works for 30 days outside a camp will not be considered to reside in the camp during the 30 days while living and working outside a camp. An individual is not considered to reside in a camp located in a hardship area during any period when the area where the camp is located is not designated as a hardship area. (See § 1.913–3(e).)

(c) *Camp*—(1) *In general.* A camp is lodging which is all of the following:

(i) Substandard;

(ii) Provided by or on behalf of the employer for the convenience of the employer because the place where the taxpayer renders services is in a remote area where satisfactory housing is not available to the taxpayer on the open market;

(iii) Located as near as practicable to, and in the vicinity of, the worksite of the taxpayer; and

(iv) Furnished in a common area or enclave which is not available to the general public for lodging or accommodations and which normally accommodates 10 or more persons who are either employees of the taxpayer's employer or other employees performing services at the taxpayer's worksite.

For purposes of paragraph (c)(1)(ii) of this section, the term "for the convenience of the employer" has the same meaning which it has for purposes of section 119. For purposes of paragraph (c)(1)(iv) of this section, a cluster of housing units is not a common area or enclave if adjacent to or surrounded by substantially similar housing available to the general public. For purposes of paragraph (c)(1)(iv) of this section, two or more common areas or enclaves which house employees who work on the same project (for example, a highway project) are considered to be one common area or enclave in determining whether they normally accommodate 10 or more employees performing services at the taxpayer's worksite.

(2) *Substandard lodging.*—(i) *In general.* Lodging is considered to be substandard if, under all the relevant facts and circumstances, it is appreciably below the standard of housing typically occupied in the United States by individuals whose income equals the lesser of the median salary paid to American employees residing in the common area of the salary of an employee of the United States who is compensated at an annual rate paid for step 1 of grade GS–14. For purposes of ths section, the salary of an employee is the amount required to be included in the income of the taxpayer as compensation. Relevant facts and circumstances which may indicate that lodging is substandard include (but are not limited to) the following:

(A) Inadequate living space;

(B) Lack of privacy occasioned by communal dining halls or other shared facilities;

(C) Temporary nature of the lodging, such as that inherent in prefabricated housing set in position on cinder blocks or housing consisting of movable units such as mobile homes, trailers, or portable camp facilities;

(D) An immediate environment that exposes the occupants of the housing to unsanitary or unhealthy conditions (for example, open sewers immediately adjacent to the housing) or to unusual risk of personal harm or property loss due to terrorism or civil unrest;

(E) Lack of improvements typically found in residential areas in the United States, such as paved and lighted streets, recreational areas, sewage facilities, and landscaping; or

(F) The cost per square foot of the lodging if, constructed in the United States would be substantially less than the median cost per square foot to construct housing in the United States.

The general environment in which lodging is located (*e.g.*, the climate, prevalence of insects, etc.) does not of itself make lodging substandard. The general environment is relevant, however, if lodging is inadequate to protect the occupants from environmental conditions. The individual employee's income level is under no circumstances relevant to whether lodging is substandard. Thus, lodging occupied by a particular employee which is substantially inferior to the housing previously occupied by that individual in the United States is not substandard unless it is also substantially inferior to housing typically occupied in the United States by individuals whose income equals the lesser of the median salary paid to American employees residing in the common area or the salary of a GS–14, step 1, U.S. Government employee.

(ii) *Presumptions.* Lodging will generally be considered to be substandard if it consists of any of the following:

(A) Portable, temporary, or movable housing occupied by employees who are not accompanied by spouse or dependents, in which the living space intended to be occupied by each employee is less than 250 square feet;

(B) Portable, temporary, or movable housing occupied by employees who are accompanied by spouse or dependents, in which the total interior living space intended to be occupied by a family unit is less than 800 square feet plus 200 square feet for each family member, other than the employee's spouse, who is expected to reside with the employee, and is no more than 1200 square feet;

(C) Housing which lacks adequate and reliable heating or air conditioning if appropriate for the climate, or adequate and reliable utilities such as electricity or sewage facilities; or

(D) Housing which lacks private sleeping quarters for unrelated individuals, private bath or toilet facilities for unrelated individuals, or fresh hot and cold piped water.

Notwithstanding the fact that lodging is described in paragraph (c)(2)(ii)(A), (B), or (C), lodging will not be considered substandard if it is clearly not inferior to housing typically occupied in the United States by individuals whose income equals the lesser of the median salary paid to American employees residing in the common area or the salary of a GS–14, step 1, U.S. Government employee. For purposes of paragraph (c)(2)(ii)(A) and (B), living space does not include shared areas, such as dining halls, lavatories, or storage facilities which are used by unrelated employees. For purposes of paragraph (c)(2)(ii)(A) and (B), housing is not portable, temporary or movable merely because it is prefabricated.

(iii) *Determination of median salary.* In determining the median salary of American employees residing in the common area, any reasonable method may be used. For example, the median salary may be determined by taking the average of the median salaries of American employees at the beginning and end of the calendar year.

(3) *Remote area.* Solely for purposes of section 911, a remote area is a place where satisfactory housing is unavailable to the taxpayer on the open market within a reasonable commuting distance of the place at which the taxpayer renders services.

(i) *Facts and circumstances.* Facts and circumstances to be considered in determining if satisfactory housing is unavailable within a reasonable commuting distance include (but are not limited to):

(A) The inaccessibility to available housing due to geographic factors or the quality of the roads;

(B) The number of housing units available on the open market within a reasonable commuting distance in relation to the number of housing units required for the employer's employees;

(C) The cost of housing available on the open market; or

(D) Terrorism or civil unrest present in the area where housing would be available which would subject U.S. citizens to unusual risk of personal harm or property loss.

(ii) *Presumptions.* Satisfactory housing will generally be considered to be unavailable to the employee on the open market if any of the following conditions is satisfied:

(A) The foreign government requires the employer to provide housing for its employees other than housing available on the open market;

(B) An unrelated person awarding work to an employer requires that the employer's employees occupy housing specified by such person; or

(C) The place at which the employee renders services is not within a reasonable commuting distance of a community with a population of 50,000 or more individuals.

The conditions of paragraph (c)(3)(ii)(A) and (B) are not fulfilled if the requirement described therein applies primarily to American employers or employers of American employees and there is a significant number of foreign employers or employees other than Americans.

(d) *Hardship area.* A hardship area is defined in § 1913–3(e).

(e) *Section 119 and business premises.* With respect to a taxpayer who excludes income pursuant to section 911, a camp as defined in paragraph (c) of this section is considered to be part of the business premises of the taxpayer's employer for purposes of section 119 for the portion of the taxable year during which the taxpayer satisfies the foreign residence test or the physical presence test of § 1913–2(a)(1) and (2) and resides in a camp located in a hardship area.

§ 1.911–2 Qualifying earned income.

(a) *In general.* Qualifying earned income is earned income (defined in paragraph (b) of this section) which—

(1) Is attributable to services performed in a foreign country (defined in § 1.913–3(d)) during the portions of the taxable year during which the taxpayer resides in a camp located in a hardship area and satisfies the foreign residence test or the physical presence test of § 1.913–2(a) (1) and (2);

(2) Is not paid by the U.S. government or any U.S. government agency or instrumentality;

(3) Is not received as a pension or annuity or included in the taxpayer's gross income by reason of section 402(b) (relating to the taxability of a beneficiary of a nonexempt trust) or section 403(c) (relating to the taxability of a beneficiary under a nonqualified annuity or under annuities purchased by exempt organizations); and

(4) Is not received after the close of the taxable year following the taxable year in which the services giving rise to the income are performed.

For purposes of paragraph (a)(1) of this section, the place of receipt of income is immaterial in determining whether income is derived from services performed in a foreign country.

(b) *Definition of "earned income"*—(1) *In general.* "Earned income" means wages, salaries, professional fees, and other amounts received as compensation for personal services actually rendered. "Earned income" does not include any portion of compensation paid by a corporation which represents a distribution of earnings and profits rather than a reasonable allowance for personal services actually rendered to the corporation.

(2) *Earned income from business in which capital is material.* In the case of a taxpayer engaged in a trade or business (other than in corporate form) in which both personal services and capital are material income-producing factors, a reasonable allowance as compensation for the personal services actually rendered by the taxpayer shall be considered earned income. In no case, however, may the total amount to be treated as earned income exceed 30 percent of the taxpayer's share of the net profits of the trade or business.

(3) *Earned income and employed assistants.* Earned income includes all fees received by a taxpayer engaged in a professional occupation (such as a doctor or lawyer) in the performance of professional activities. Professional fees constitute earned income even though the taxpayer employs assistants to perform part or all of the services rendered, provided the taxpayer's patients or clients look to the taxpayer as the person responsible for the services rendered.

§ 1.911–3 Determination of the maximum excludable amount of qualifying earned income.

(a) *Application of the limitation*—(1) *In general.* Qualifying earned income described in § 1.911–2 is excludable only to the extent of the limitation specified in paragraph (b) of this section for the taxable year in which the income is earned. Income is considered to be earned in the taxable year in which the services giving rise to the income are performed. Earned income is not to be attributed to any year in which the services performed are insubstantial in nature. The determination of the amount of excluded earned income in this manner does not affect the time for reporting any amounts included in gross income.

(2) *Illustrations.* Paragraph (a)(1) of this section is illustrated by the following examples:

Example (1). B, a U.S citizen and cash-basis taxpayer, is a *bona fide* resident of foreign country X for the entire taxable years 1980 and 1981. During that entire period, B resides in a camp located in a hardship area. In 1981, B receives $40,000 for services performed in country X during 1980 and 1981. Of the total amount received in 1981 ($40,000), $30,000 is attributable to services performed during 1980, and $10,000 is attributable to services performed during 1981. The limitation specified in § 1.911–3(b) is $20,000 for income earned in each of the years 1980 and 1981. Thus, $20,000 of the $30,000 earned in 1980 and the entire $10,000 earned in 1981 are excluded in 1981 (the year of receipt). The nonexcludable $10,000 of the $30,000 earned in 1980 must be included in B's gross income in 1981 (the year of receipt).

Example (2). The facts are the same as in example (1), except that in 1982 B receives an additional $5,000 for services performed in country X in 1981. Since the $10,000 of income earned and received in 1981 is excluded, the remaining limitation for income earned in 1981 which is available for earned income received in 1982 is $10,000. Accordingly, the $5,000 earned in 1981 but received in 1982 is excluded from B's gross income in 1982.

(b) *Limitation*—(1) *In general.* The limitation for each entire taxable year on the exclusion of qualifying earned income described in § 1.911–2 equals $20,000 multiplied by the following fraction:

$$\frac{\text{The number of qualifying days}}{\text{The number of days in the taxable year}}$$

(2) *Qualifying days.* The number of qualifying days is the total number of calendar days in the taxable year during which the taxpayer—

(i) Resides in a camp located in a hardship area within the meaning of § 1.911–1(b); and

(ii) Satisfies the foreign residence test or the physical presence test of § 1.913–2(a) (1) and (2).

(c) *Illustrations.* This section is illustrated by the following examples:

Example (1). B, a U.S. citizen and a calendar year, cash-basis taxpayer, is a *bona fide* resident of foreign country X for the period April 1, 1979, through September 30, 1981. B resides in a camp located in a hardship area during that entire period and returns to the United States during that period only for a 3-week vacation in 1980. B receives $50,000 in each of the years 1979, 1980, and 1981 as current compensation for services performed in country X during the portions of those years during which B is a resident of country X. B receives no other compensation. The amounts of excluded income earned in taxable years 1979 through 1981 are computed as follows: of the income earned in 1979, $15,068 ($20,000 × 275/365); of the income earned in 1980, $20,000 ($20,000 × 366/366); and of the income earned in 1981, $14,959 ($20,000 × 273/365).

Example (2). B, a U.S. resident and a calendar year, cash-basis taxpayer, arrives in foreign country Y from the United States on April 24, 1980. B resides in a camp located in a hardship area during the entire time B is in country Y. B remains in country Y until October 25, 1981, at which time B departs for the United States where B remains for the rest of 1981. B qualifies under the physical presence test of § 1.913–2(a)(2) for the period during which B is in country Y. B receives $50,000 in each of the years 1980 and 1981 as current compensation for services performed in country Y during the portions of those years during which B is in country Y. B receives no other compensation. The amounts of excluded income earned in taxable years 1980 and 1981 are computed as follows: of the income earned in 1980, $13,716 ($20,000 × 251/366); and of the income earned in 1981, $16,274 ($20,000 × 297/365).

§ 1.911–4 Treatment of community income

(a) *General rule.* This paragraph applies to married taxpayers with community income other than taxpayers described in paragraph (b) of this section. The amount of excluded earned income is first determined separately for each spouse under the rules of §§ 1.911–1 through 1.911–3 on the basis of the income attributable to that spouse's services. The sum of the amounts of excluded earned income so determined for each spouse is the aggregate amount excluded on a joint return. If the couple files separate returns, one-half of the aggregate amount which would be excluded on a joint return constitutes the exclusion on the separate return of each spouse.

(b) *Special rules applicable to married taxpayers to whom section 879 applies.* The following special rules regarding the treatment of community income apply to any U.S. citizen or resident married to a nonresident alien for whom an election under section 6013 (g) or (h) is not in effect to have the nonresident alien spouse treated as a U.S. resident. Section 879 (applicable to taxable years beginning after December 31, 1976) provides that earned income of such couples which is community income under the applicable community property law is treated as the income of the spouse who rendered the services for which the earned income was paid or accrued. The amount of earned income excluded under section 911 from the gross income of the spouse who is a U.S. citizen or resident is thus computed on the basis of the earned income attributed to that spouse under section 879. Any portion of such earned income that is not excluded is taxable to that spouse. The non-resident alien spouse does not compute an excluded amount with respect to any income attributed to that spouse under section 879 since, among aother things, nonresident aliens do not qualify for the section 911 exclusion.

(c) *Illustrations.* This section is illustrated by the following examples:

Example (1). B, a U.S. citizen and a cash-basis taxpayer, qualifies for the section 911 exclusion for the entire 1981 taxable year.

During 1981, B receives $40,000 compensation for services performed during that year in foreign countrys, C, B's spouse and a U.S. citizen, is a resident of the United States during 1981 and receives no compensation during 1981. B's salary is considered community income under the law of state X, the state of residence of both spouses. If the income were not community income $20,000 of the $40,000 received by B would be excluded from B's gross income. As a result, whether B and C files (delete "s") separate returns or a joint return, the aggregate amount excluded from their combined gross income is $20,000.

Example (2). The facts are the same as in example (1), except that C also qualifies for the section 911 exclusion for the entire 1981 taxable year. In addition, C receives $10,000 during the 1981 taxable year for services performed in country S during that year. If all compensation received during 1981 were not community income, $20,00 of the $40,000 received by B would be excluded from B's gross income and the entire $10,000 received by C would be excluded from C's gross income. As a result, whether B and C files separate returns or a joint return, the aggregate amount excluded from their combined gross income is $30,000.

Example (3). B, a U.S. citizen and cash-basis taxpayer, qualifies for the section 911 exclusion for the entire 1981 taxable year. During 1981, B receives $40,000 compensation for services performed in foreign country X during that year. C, B's spouse and a citizen of country X, and B are both residents of country X during 1981. C receives $10,000 compensation for services performed during that year in country X. Under the law of country X, one-half of B's earnings (or $20,000) belong to C and one-half of C's earnings (or $5,000) belong to B. An election under section 6013 (g) or (h) is not in effect to have C, a nonresident alien, treated as a resident of the United States. As a result, the $40,000 income received by B is treated as the earned income of B under section 879 and is subject to U.S. tax if not otherwise excluded. The amount of earned income excluded by B from gross income is $20,000. The remaining $20,000 received by B is included in B's gross income for 1981. The $10,000 received by C is treated as the earned income of C and is not subject to tax since it is derived by a nonresident alien from sources outside the United States.

§ 1.911-5 Disallowance of deductions and the foreign tax credit.

(a) *Deductions.* No deduction is allowed for any expenses (other than moving expenses), losses, or other otherwise deductible items definitely related (within the meaning of § 1.861-8 in whole or in part to earned income, to the extent they are properly apportioned (under the rules of § 1.861-8) to excluded earned income.

Thus, if the taxpayer earns $60,000 of qualifying earned income during the taxable year, incurs $3,000 of otherwise deductible business expenses allocable to the entire $60,000, and excludes $20,000 of that income, $1,000 of the business expenses ($3,000×$20,000/$60,000) are not deductible, because they are apportioned to the excluded earned income of $20,000. Deductions which are not definitely related to qualifying earned income are deductible to the extent allowed by chapter 1 of the Code. Examples of deductions that are not definitely related are personal and family medical expenses, real estate taxes and mortgage interest on a personal residence, charitable contributions, and deductions for personal exemptions. In the case of a taxpayer engaged in trade or business in which both personal services and capital are material income-producing factors, the deductions definitely related and properly apportioned to qualifying earned income are determined by multiplying the deductions definitely related and properly apportioned to the profits of such trade or business by a fraction, the numerator of which is qualifying earned income and the denominator of which is the profits of such trade or business.

(b) *Foreign taxes.* No deduction or credit is allowed for foreign income, war profits, or excess profits taxes paid or accrued with respect to excluded earned income. To determine the amount of disallowed taxes, multiply the tax imposed on earned income by a fraction the numerator of which is excluded earned income less deductible expenses definitely related in whole or in part to earned income, to the extent they are properly apportioned to excluded earned income (see § 1.911-5(a)), and the denominator of which is earned income less deductible expenses allocable to earned income. If the tax on earned income is imposed under foreign law on earned income and on some other amount (for example, some other type of income or an amount not subject to tax in the United States), the denominator equals the total of the amounts subject to the tax less deductible expenses allocable to all such amounts. The following examples illustrate the determination of foreign income taxes paid or accrued with respect to excluded earned income.

Example (1). A, a U.S. citizen and cash-basis taxpayer, qualifies for the section 911 exclusion for the entire 1981 taxable year as a bona fide resident of foreign country X. For 1981, A pays $10,000 in income tax to country X. The 10,000 tax is imposed after reduction for allocable expenses and personal deductions not allocable to any particular items of income, on the following amounts: $40,000 received in 1981 for services performed during that year; and $9,000 of unrealized capital gains with respect to stock and other securities owned by A. Of the $40,000 of earned income, $35,000 is qualifying earned income under § 1.911-2; the remaining $5,000 does not qualify for the section 911 exclusion because it is received for services performed in the United States. A incurred $4,000 of expenses which are deductible and allocable to A's earned income. A excludes $20,000 fo qualifying earned income from gross income for 1981. The $9,000 of unrealized capital gains is not subject to tax in the United States. In addition to the $10,000 tax on the above amounts, A pays a separate tax to country X of $800 on $8,000 of interest received during 1981. The amount of country X tax which is properly apportioned to excluded earned income (and, therefore, not deductible or creditable) equals $4,000, which is determined by multiplying the tax of $10,000 by the following fraction:

$18,000 ($20,000 excluded earned income less $2,000 of deductible expenses allocable to excluded income)

$45,000 ($40,000 of earned income less $4,000 of deductible expenses plus $9,000 unrealized capital gains)

The separate $800 tax imposed on interest income is not apportioned in part to the excluded earned income, and the interest income is disregarded for purposes of apportioning the $10,000 tax.

Example (2). A, a U.S. citizen and cash-basis taxpayer, qualifies for the section 911 exclusion for the entire 1981 taxable year as bona fide resident of foreign country X. In 1981, A receives $50,000 of qualifying earned income for services performed during that year and excludes $20,000 of that income from gross income. Of the $50,000 received by A, $30,000 is for services performed in country X, and $20,000 is for services performed in country Y. Country Y does not tax A's income. Country X imposes a tax of $3,000 on the $30,000 received for services in country X but does not tax A's income received for services in country Y. The $20,000 exclusion is allocated on a pro rata basis between the portion of qualifying earned income subject to tax in country X and the portion not subject to tax. Thus, $12,000 ($20,000 exclusion X $30,000/$50,000) of the $30,000 subject to tax in country X is considered excluded under section 911. The amount of country X tax which is properly apportioned to excluded earned income equals $1,200, which is determined by multiplying the tax of $3,000 by the following fraction:

$12,000 (excluded earned income subject to country X tax)

$30,000 (income subject to country X tax)

§ 1.911-6 Procedural rules.

(a) *Election not to exclude earned income.* A taxpayer who is entitled to the benefit of section 911 may elect under section 911(d) not to exclude earned income as provided in section 911. This election shall be made on Form 2555, which must be filed either with the income tax return or with an amended return. The election is effective only for the taxable year for which the return is filed. The election may be revoked by filing a new Form 2555 with an amended return. An election not to exclude

earned income as provided in section 911 enables a qualifying taxpayer, and in certain cases the taxpayer's spouse, to claim the benefits of section 913 (see § 1.913–2(a)). In addition, taxpayers who elect not to exclude income are not subject to the rules of § 1.911–5 relating to the disallowance of deductions and of the foreign tax credit.

(b) *Returns and extensions*—(1) *In general.* Any return filed before completion of the period necessary to qualify a taxpayer for the exclusion under section 911 or the deduction under section 913 shall be filed without regard to the exclusion or deduction provided in those sections. A claim for a credit or refund of any overpayment of tax may be filed, however, if the taxpayer subsequently qualifies for the exclusion or deduction. See section 6012(c) and § 1.6012–1(a)(3), relating to returns to be filed and information to be furnished by taxpayers who qualify for the exclusion under section 911.

(2) *Extensions.* A taxpayer desiring an extension of time (in addition to the automatic extension of time granted by § 1.6081–2) for filing a return until after the completion of the qualifying period described in § 1.913–2(a)(1) or (2) for claiming either the exclusion under section 911 or the deduction under section 913 may apply for an extension on Form 2350, Application for Extension of Time for Filing United States Income Tax Return. The application must be filed with the Director, Internal Revenue Service Center, Philadelphia, Pennsylvania 19255. The application must set forth the facts relied upon to justify the extension of time requested and must include a statement as to the earliest date the taxpayer expects to be entitled to the exclusion or deduction.

(c) *Declaration of Estimated Tax.* In estimating gross income for the purpose of determining whether a declaration of estimated tax must be made for any taxable year, a taxpayer is not required to take into account income which the taxpayer believes will be excluded from gross income under the provisions of section 911. In computing estimated tax, however, the taxpayer must take into account, among other things, the denial of the foreign tax credit for foreign taxes allocable to the excluded income (see § 1.911–5(b)).

§ 1.911–7 Effective date of §§ 1.911–1 through 1.911–6.

Sections 1.911–1 through 1.911–6 apply to taxable years beginning after December 31, 1978. Those sections also apply to the taxable year beginning during 1978 of taxpayers who do not make an election pursuant to section 209(c) of the Foreign Earned Income Act of 1978 (Pub. L. 95–615, 92 Stat. 3109) to have prior law apply to that taxable year. Prior law is section 911 as amended by section 1011 (a), (b), and (c) of the Tax Reform Act of 1976 (Pub. L. 94–455, 90 Stat. 1610) and by section 701(u)(10) of the Revenue Act of 1978 (Pub. L. 95–600, 92 Stat. 2917). For the rules applicable to earlier taxable years, see 26 C.F.R. §§ 1.911–1 and 1.911–2 (1978).

Par. 2. Sections 5b.913–1 through 5b.913–13 are deleted and the following §§ 1.913–1 through 1.913–13 are adopted.

Sec.

1.911–1 Deduction for certain expenses of living abroad.
1.911–2 Taxpayers qualifying for the deduction.
1.911–4 Foreign source earned income limitation.
1.911–5 Cost-of-living differential.
1.911–6 Qualified housing expenses.
1.911–7 Qualified school expenses.
1.911–8 Qualified home leave transportation expenses.
1.911–9 Hardship area amount.
1.911–10 Married couples with two qualifying expenses.
1.911–11 Married couples with community income.
1.911–12 Returns and extensions.
1.911–13 Effective date.

§ 1.913–1 Deduction for certain expenses of living abroad.

(a) *In general.* Section 913 allows to qualifying taxpayers a deduction which consists of the following amounts:

(1) The cost-of-living differential described in § 1.913–5;

(2) Qualified housing expenses described in § 1.913–6;

(3) Qualified school expenses described in § 1.913–7;

(4) Qualified home leave transportation expenses described in § 1.913–8; and

(5) The hardship area amount described in § 1.913–9.

The section 913 deduction is a deduction from gross income and is limited to the amount of the foreign source earned income limitation described in § 1.913–4. In addition, special rules in § 1.913–10 apply to married couples, both spouses of which qualify for the section 913 deduction.

(b) *Relation to the foreign tax credit.* The amount of foreign taxes for which a credit may be claimed, determined prior to the application of the limitation of section 904, is not reduced as a result of claiming the benefits of section 913. The section 913 deduction, however, is allocable to income from sources without the United States for purposes of computing the foreign tax credit limitation under section 904.

§ 1.913–2 Taxpayers qualifying for the deduction.

(a) *In general.* A taxpayer qualifies for the section 913 deduction if the taxpayer either—

(1) Is a citizen of the United States and establishes to the satisfaction of the Commissioner that the taxpayer has been a *bona fide* resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year; or

(2) Is a citizen or resident individual of the United States and has been present in a foreign country or countries for at least 510 full calendar days of any period of 18 consecutive months.

A taxpayer does not qualify for the section 913 deduction during a taxable year, however, if the taxpayer excludes from gross income under section 911 any earned income attributable to services performed during that taxable year. In addition, a taxpayer does not qualify for the section 913 deduction for any period during which the taxpayer's spouse derives earned income which is excluded from gross income under section 911 unless the taxpayer's spouse maintains a separate abode which is not within a reasonable commuting distance of the taxpayer's abode.

(b) *Determination of bona fide residence.* Whether a taxpayer is a *bona fide* resident of a foreign country shall be determined by applying, to the extent possible, the principles of section 871 and the regulations thereunder for determining the residence of aliens. Though the period of *bona fide* residence must be uninterrupted, if *bona fide* residence in a foreign country or countries is established, temporary visits to the United States or elsewhere on vacation or business during the taxpayer's period of residence will not necessarily nullify the taxpayer's status as a *bona fide* resident of a foreign country. A taxpayer with earned income from sources within a foreign country is not a *bona fide* resident of that country if—

(1) The taxpayer makes a statement to the authorities of the foreign country claiming to be a nonresident of that country and

(2) The taxpayer is held not subject as a resident of the foreign country to the income tax imposed by that country on such income.

If a taxpayer has made a statement of nonresidence to the authorities of a foreign country which is pending as of any date a determination of the taxpayer's *bona fide* residence is being made, the taxpayer is not considered a *bona fide* resident of the foreign country as of that date.

(c) *The 510-day/18-month requirement*—(1) *In general.* For purposes of paragraph (a)(2) of this section, the term "18 consecutive months" means any period of 18 months duration. The 18-month period may begin with any day of the calendar

month. The period ends with the day before the corresponding calendar day in the 18th succeeding month or, if there is no corresponding calendar day, with the last day of the 18th succeeding month. The 18-month period may commence before or after the taxpayer's arrival in a foreign country and may terminate before or after the taxpayer's departure. The 510 full days need not be consecutive, but may be interrupted by periods during which the taxpayer is not present in a foreign country. A taxpayer who has been present in a foreign country and then travels over areas not within any country for less than 24 hours shall not be deemed outside the foreign country during the period of travel, so long as the individual does not travel within the United States. Time spent in a foreign country in the employment of the U.S. government or an agency or instrumentality of the U.S. government counts toward satisfacation of the 510-day requirement. In addition, time spent in a foreign country prior to January 1, 1978, counts toward satisfaction of the 510-day requirement, even though no deduction is allowed under section 913 for that time.

(2) *Illustrations of the 510-day rule.* The 510-day rule is illustrated by the following examples:

Example (1). B, a U.S. citizen, arrives in Venezuela from New York at 12 noon on April 24, 1980. B remains in Venezuela until 2 p.m. on October 25, 1981, at which time B departs for the United States where B remains for the rest of 1981. B is in a foreign country an aggregate of 510 full days during each of the following two 18-month periods: March 17, 1980, through September 16, 1981; and June 2, 1980, through December 1, 1981.

Example (2). C, a resident alien of the United States, travels extensively from the time C leaves the United States on March 6, 1980, until the time C departs England on January 1, 1982, to return to the United States permanently. The schedule of C's travel and the number of full days at each location are listed below:

Country	Time and date of arrival	Time and date of departure	Full days in foreign country
United States		10 p.m. (by air) Mar. 5, 1980	
England	9 a.m., Mar. 6, 1980	10 p.m. (by ship) June 25, 1980	110
United States	11 a.m., June 30, 1980	1 p.m. (by ship) July 19, 1980	0
France	3 p.m., July 24, 1980	11 a.m. (by air) Aug. 22, 1981	393
United States	4 p.m., Aug 22, 1981	9 p.m. (by air) Sept. 4, 1981	0
England	9 a.m., Sept. 5, 1981	9 a.m. (by air) Jan 1, 1982	117
United States	1 p.m., Jan. 1, 1982		

C is not present in a foreign country or countries an aggregate of 510 full days during the 18-month period beginning March 7, 1980 (C's first full day in a foreign country). However, C is present in a foreign country or countries an aggregate of 510 full days during the following 18-month periods: July 1, 1980, through December 31, 1981; and July 25, 1980, through January 24, 1982. The computation with respect to each period may be illustrated as follows:

	Full days in foreign country
First 18-month period (Mar. 7, 1980, through Sept 6, 1981):	
Mar. 7, 1980, through June 24, 1980	110
June 25, 1980, through July 24, 1980	0
July 25, 1980 through Aug. 21, 1981	393
Aug. 22, 1981, through Sept. 5, 1981	0
Sept. 6, 1981	1
Total full days	504
Second 18-month period (July 1, 1980, through Dec. 31, 1981):	
July 1, 1980, through July 24, 1980	0
July 25, 1980, through Aug. 21, 1981	393
Aug. 22, 1981, through Sept. 5, 1981	0
Sept. 6, 1981, through Dec. 31, 1981	117
Total full days	510
Third 18-month period (July 25, 1980, through Jan. 24, 1982):	
July 25, 1980, through Aug. 21, 1981	393
Aug. 22, 1981, through Sept. 5, 1981	0
Sept. 6, 1981, through Dec 31, 1981	117
Jan. 1, 1982, through Jan 24, 1982	0
Total full days	510

Example (3). The facts are the same as in example (2), except that C arrives in England on February 25, 1980, instead of March 6, 1980. As a result, C is present in a foreign country or countries an aggregate of 510 full days during the 18-month period February 19, 1980, through August 18, 1981, as well as during the latter two of the three periods listed in example (2). The computation with respect to the period commencing February 19, 1980, is illustrated below:

	Full days in foreign country
Feb. 19, 1980, through Feb. 25, 1980	0
Feb. 26, 1980, through June 24, 1980	120
June 25, 1980, through July 24, 1980	0
July 25, 1980, through Aug 18, 1981	390
Total full days	510

Because the 18-month periods commencing February 19, 1980, and July 25, 1980 (the third 18-month period in example (2)), fully overlap the 18-month period commencing July 1, 1980 (the second 18-month period in example (2)), that latter period need not be considered in determining whether C qualifies under the 510-day rule for the days covered by that period.

§ 1.913-3 General definitions.

(a) *Tax home.* For purposes of section 913 and the regulations thereunder, the term "tax home" has the same meaning which it has for purposes of section 162(a)(2). An exception to the general rule is that a taxpayer shall not be considered to have a tax home in a foreign country for any period for which the taxpayer's abode is in the United States. For example, a taxpayer who lives in Detroit, Michigan, but commutes daily to work in Windsor, Ontario, would ordinarily have his or her tax home in Windsor but nevertheless would be ineligible for the deduction for excess foreign living costs. Temporary presence of the taxpayer in the United States does not necessarily mean that the taxpayer's abode is in the United States during that time.

(b) *Qualified second household.*—(1) *In general.* A qualified second household is a separate household maintained by a taxpayer for the taxpayer's spouse or dependents who, if minors, are in the taxpayer's legal custody or the joint custody of the taxpayer and spouse. In order to be a qualified second household, the separate household must be maintained in a foreign country at a place other than the tax home of the taxpayer and must be provided because of adverse living conditions at the taxpayer's tax home. The taxpayer's tax home need not be in a hardship area (defined in paragraph (e) of this section) in order for the separate household to be a qualified second household. In no circumstances is a taxpayer considered to maintain more than one qualified second household at the same time.

(2) *Adverse living conditions.* Adverse living conditions are living conditions which are dangerous, unhealthy, or otherwise adverse. If a taxpayer's tax home is in a hardship area (defined in paragraph (e) of this section), living conditions will be considered to be adverse. Adverse living conditions include a state of warfare or civil insurrection in the general area of the taxpayer's tax home. Adverse living conditions exist if the taxpayer's abode is on the business premises of the employer for the convenience of the employer and, because of the nature of the business premises (for example, a construction site or drilling rig), it is not feasible to provide family housing. The criteria used by the U.S. Department of State in granting a separate maintenance allowance are relevant but not determinative for purposes of determining whether a separate household is provided because of adverse living conditions.

(c) *United States.* The term "United States" when used in a geographical sense includes the possessions of the United States and the areas set forth in section 638(1). It also includes areas described in section 638(2) to the extent that they relate to U.S. possessions.

(d) *Foreign country.* The term "foreign country" means any territory under the sovereignty of a government other than that of the United States. It includes the air space over any such territory. It does not include a possession or territory of the United States.

(e) *Hardship area.* A hardship area is any place in a foreign country (defined in paragraph (d) of this section) which is designated by the Secretary of State as a place where living conditions are extraordinarily difficult or notably unhealthy, or where excessive physical hardships exist, and for which a post differential of 15 percent or more would be provided under section 5925 of Title 5 of the U.S. Code to any officer or employee of the U.S. Government present at that place. Taxpayers who wish to apply for a hardship area determination must apply to the State Department Allowances Staff, Department of State, Washington, D.C. 20520.

(f) *Reasonable commuting distance.* For purposes of sections 911 and 913, a reasonable commuting distance is a distance which is capable of being traveled safely and regularly by customarily available water transportation, including privately owned vehicles in 1 hour.

§ 1.913-4 Foreign source earned income limitation.

(a) *In general.* The deduction allowed under section 913 may not exceed foreign source earned income reduced by the portion of definitely related deductions (within the meaning of § 1.861-8), other than the deduction allowed by section 913, that is properly apportioned to such income. For purposes of this section deductions that are not definitely related, such as personal and family medical expenses, real estate taxes, mortgage interest on a personal residence, charitable contributions, and deductions for personal exemptions do not reduce foreign source earned income.

(b) *Foreign source earned income.* For purposes of the regulations under section 913, foreign source earned income is the earned income (defined in § 1.911-2(b)) which—

(1) Is derived by the taxpayer and, if the taxpayer's spouse shares the taxpayer's abode, by the taxpayer's spouse;

(2) Is attributable to services performed outside the United States during portions of the taxable year during which the taxpayer's tax home is in a foreign country and the taxpayer qualifies under § 1.913-2(a) for the section 913 deduction;

(3) Is not excluded from gross income under section 119; and

(4) Satisfies the requirements of § 1.911-2(a) (2), (3), and (4).

For purposes of paragraph (b)(2) of this section, the place of receipt of income is immaterial in determining whether income is attributable to services performed outside the United States.

§ 1.913-5 Cost-of-living differential.

(a) *In general.* The cost-of-living differential for an entire taxable year is the amount specified in tables issued annually by the Internal Revenue Service for the taxpayer's tax home and family size multiplied by the following fraction:

$$\frac{\text{Number of qualifying days}}{\text{Number of days in the taxable year}}$$

The amount which is the cost-of-living differential must be reduced (but not below zero) by the amount of any military or section 912 allowance excludable from gross income of the taxpayer or the taxpayer's spouse which is intended to compensate such person in whole or in part for the cost-of-living of the taxpayer's household (or in a qualified second household).

(b) *Qualifying days.* The number of qualifying days is the total number of calendar days in the taxable year during which the taxpayer's tax home is in a foreign country and the taxpayer qualifies under § 1.913-2(a) for the section 913 deduction, excluding days for which both meals and lodging are furnished to the taxpayer and the value of both is excluded from the taxpayer's gross income under section 119.

(c) *Change of foreign tax home*—(1) *In general.* If during the taxable year the taxpayer has more than one foreign tax home, the taxpayer must determine the qualifying days with respect to each foreign tax home and compute a separate cost-of-living amount for each pursuant to the rules of this section. The aggregate of those amounts constitutes the taxpayer's cost-of-living differential for the year.

(2) *Illustration.* If the taxpayer's tax home is West Berlin, West Germany, for 200 qualifying days and Paris, France, for 165 qualifying days during the taxable year, the taxpayer must compute two cost-of-living amounts. The first equals the full year's cost-of-living differential specified in the cost-of-living table for West Berlin multiplied by 200/365. The second equals the full year's cost-of-living differential specified for Paris multiplied by 165/365. The sum of the two amounts so computed constitutes the taxpayer's cost-of-living differential for the taxable year.

(d) *Family size*—(1) *In general.* In determining family size, the family includes only the taxpayer and any spouse and dependents who share the taxpayer's abode. A dependent may be considered to share the taxpayer's abode while boarding at a school only if the expenses of room and board are not deducted as qualified schooling expenses. In addition, no person is considered to share the taxpayer's abode during any days for which both meals and lodging are furnished to that person and the value of both is excluded from gross income under section 119. If family size varies during any period within the taxable year during which the taxpayer has a particular foreign tax home, a separate cost-of-living amount must be computed for each portion of that period during which the family size is different. An exception to this general rule is that a dependent who is born during a taxable year is considered to be a family member for the entire taxable year. Those amounts must then be aggregated to determine the cost-of-living differential for the taxable year.

(2) *Illustration.* If all of the days of a taxable year are qualifying days with respect to one foreign tax home and an unmarried taxpayer's only dependent attends a secondary level boarding school for 274 days of the year and lives with the taxpayer during the remaining 91 days, the taxpayer must compute two cost-of-living amounts. The first equals the full year's cost-of-living differential specified in the cost-of-living table for the taxpayer's tax home for a family size of one multiplied by 274/365. The second equals the full year's cost-of-living differential specified for the taxpayer's tax home for a family of two multiplied by 91/365. The sum of the two amounts so computed constitutes the taxpayer's cost-of-living differential for the taxable year.

(e) *Special rules for qualified second households*—(1) *In general.* The cost-of-living differential for the portion of the taxable year during which the taxpayer maintains a qualified second household (defined in § 1.913-3(b)) is determined on the basis of the amount specified for the location of the taxpayer's qualified second household. No cost-of-living differenial is determined for the taxpayer's tax home for any period during which the taxpayer maintains a qualified second household.

(2) *Qualifying days.* In determing under paragraph (b) of this section the number of qualifying days during which the taxpayer maintains a qualified second household, the number of qualifying days is not reduced by days

during which the value of the taxpayer's meals and lodging is excluded from gross income under section 119.

(3) *Family size.* Family size is determined as provided in paragraph (d) of this section, except that the family includes only the spouse and any dependents whose abode is the qualified second household. Regardless of whether the taxpayer is actually present in the qualified second household, the taxpayer is considered a family member except during days for which both meals and lodging are furnished to the taxpayer and the value of both is excluded under section 119.

§ 1.913-6 Qualified housing expenses.

(a) *In general.* The amount of qualified housing expenses equals the reasonable housing expenses incurred by or on behalf of the taxpayer and any spouse and dependents who share the taxpayer's abode less the taxpayer's base amount. The amount of qualified housing expenses must be reduced, however, by the amount of any military or section 912 allowance excludable from gross income which is intended to compensate in whole or in part for the expenses of housing located within a reasonable commuting distance of the taxpayer's tax home. Any amount required to be included in income of the taxpayer as compensation attributable to housing provided to the taxpayer shall be considered incurred on behalf of the taxpayer for housing in a foreign country.

(b) *Housing expenses*—(1) *In general.* Housing expenses include rent, utilities (other than long distance telephone charges), real and personal property insurance, occupancy taxes not described in paragraph (b)(1)(v) of this section, nonrefundable fees paid for securing a leasehold, rental of furniture and accessories, residential parking, and repairs. Housing expenses do not include—

(i) The cost of house purchase, improvements and other costs which are capital expenditures;

(ii) The cost of purchased furniture or accessories or domestic labor (maids, gardeners, etc.);

(iii) Amortized payments of principal with respect to an evidence of indebtedness secured by a mortgage on the taxpayer's housing;

(iv) Depreciation of housing owned by the taxpayer, or amortization or depreciation of capital improvements made to housing leased by the taxpayer; or

(v) Interest and taxes deductible under section 163 or 164 or other amounts deductible under section 216 (a).

(2) *Limitation.* Housing expenses are taken into account for purposes of this section only to the extent that they are attributable to housing for portions of the taxable year during which—

(i) The taxpayer's tax home is in a foreign country;

(ii) The value of the taxpayer's housing is not excluded under section 119; and

(iii) The taxpayer qualifies under § 1.913-2(a) for the section 913 deduction.

In addition, except as provided in paragraph (d)(1) of this section relating to qualified second households, if the taxpayer maintains more than one foreign abode at the same time, housing expenses are to be taken into account only to the extent that they are incurred with respect to the abode which bears the closest relationship (not necessarily geographic) to the taxpayer's tax home.

(3) *Reasonableness.* An amount paid for housing is reasonable for purposes of paragraph (a) of this section only to the extent that it does not exceed an amount which would be paid for housing which is not lavish or extravagant under the circumstances.

(c) *Base housing amount*—(1) *In general.* The base housing amount equals 20 percent of the excess of the taxpayer's worldwide earned income over the sum of the following amounts—

(i) The portion of definitely related deductions (within the meaning of § 1.861-8), other than the deduction allowed under section 913, which is allocable to worldwide earned income;

(ii) The cost-of-living differential (determined under § 1.913-5);

(iii) The qualified school expenses (determined under § 1.913-7);

(iv) The qualified home leave transportation expenses (determined under § 1.913-8);

(v) The hardship area amount (determined under § 1.913-9); and

(vi) Housing expenses (defined in paragraphs (a) and (b) of this section).

(2) *Worldwide earned income.* Worldwide earned income is earned income (defined in § 1.911-2(b)), whether or not from sources outside the United States, which—

(i) Is derived by the taxpayer and, if the taxpayer's spouse shares the taxpayer's abode, by the taxpayer's spouse;

(ii) Satisfies the requirements of § 1.911-2(a)(2), (3), and (4); and

(iii) Is attributable to services performed during portions of the taxable year during which—

(A) The taxpayer's tax home is in a foreign country;

(B) The value of the taxpayer's housing is not excluded under section 119; and

(C) The taxpayer qualifies under § 1.913-2(a) for the section 913 deduction.

(d) *Special rules for qualified second households*—(1) *In general.* Qualified housing expenses may be claimed for housing expenses relating to the taxpayer's tax home and for housing expenses relating to a qualified second household. Qualified housing expenses are computed separately with respect to each.

(2) *Qualified housing expenses for the tax home.* In the case of a taxpayer who maintains a qualified second household, the qualified housing expenses for housing at the taxpayer's tax home are determined as provided in paragraphs (a), (b), and (c) of this section, except that, if the taxpayer's tax home is in a hardship area (defined in § 1.913-3 (e)), the base housing amount with respect to the tax home equals zero rather than the amount determined as provided in paragraph (c) of this section. In determining under paragraph (c) of this section the base housing amount of a taxpayer whose tax home is not in a hardship area, housing expenses in paragraph (c)(1)(vi) of this section do not include the housing expenses incurred with respect to the qualified second household.

(3) *Qualified housing expenses for the qualified second household*—(i) *Expenses.* In determining under paragraph (b) of this section the housing expenses relating to the qualified second household, the limitation of paragraph (b)(2)(ii) of this section does not apply, so that housing expenses may include those incurred for housing during portions of the taxable year during which the value of the taxpayer's housing at the taxpayer's tax home is excluded under section 119. In addition, the words "qualified second household" are substituted for "taxpayer's tax home" in paragraph (a) of this section. Thus, the amount of qualified housing expenses need not be reduced by the amount of any allowance excludable under section 912 for the expenses of housing located at the taxpayer's tax home, but must be reduced by the amount of any military or section 912 allowance excludable from gross income which compensates the taxpayer or the taxpayer's spouse in whole or in part for the expenses of housing at the location of the qualified second household.

(ii) *Base housing amount.* In determining under paragraph (c) of this section the base housing amount relating to the qualified second household—

(A) Housing expenses in paragraph (c)(1)(vi) of this section include those relating both to the qualified second household and to housing at the taxpayer's tax home;

(B) Paragraph (c)(2)(iii)(B) of this section does not apply, so that, subject to the other criteria of paragraph (c)(2) of this section, earned income used in computing the base housing amount includes income attributable to services performed during periods during which the value of the taxpayer's housing is excluded under section 119; and

(C) Worldwide earned income as defined in paragraph (c)(2) of this section does not include income attributable to services performed during any period during which the taxpayer does not maintain a qualified second household.

(e) *Illustrations.* This section is illustrated by the following examples:

Example (1) All of the following facts relate to the entire 1980 taxable year. B qualifies for the section 913 deduction under § 1.913–2(a). B's tax home is in town X, located in foreign country F. Town X is not located in a hardship area. B's spouse and their 1-year old child live in a qualified second household in city Y in foreign country Z. B receives a $40,000 salary from B's corporate employer for services performed in country F and incurs no business expenses. B's employer also pays B a cost-of-living allowance of $4,000 and provides housing owned by the employer with a local fair market rental value of $10,000, for which the employer charges B $6,000. The value of the housing furnished by B's employer is not excluded from gross income under section 119. B's total earned income is, therefore, $48,000. B's spouse has no earned income. The cost-of-living differential specified in the 1980 cost-of-living table for country Z, the location of the qualified second household, is $3,000. B pays $15,000 for housing for B's spouse and child. Neither B nor B's spouse incurs any qualified school or home leave transportation expenses.

(a) The qualified housing expenses relating to the housing at B's tax home are computed by subtracting from $10,000 (the full value of B's housing) the base housing amount for the housing at B's tax home. The base housing amount for the housing at B's tax home is $7,000—20 percent of $35,000 ($48,000 worldwide earned income less the $3,000 cost-of-living differential and the $10,000 of housing expenses). Thus, the amount of qualified housing expenses relating to the housing at B's tax home equals $3,000.

(b) The qualified housing expenses relating to the qualified second household are computed by substracting from $15,000 (the housing expenses relating to the qualified second household) the base housing amount for the qualified second household. The base housing amount for the qualified second household is $4,000—20 percent of $20,000 ($48,000 worldwide earned income less the $3,000 cost-of-living differential, the $10,000 of housing expenses relating to the housing at B's tax home, and the $15,000 of housing expenses incurred with respect to the qualified second household). Thus, the amount of qualified housing expenses relating to the qualified second household equals $11,000.

(c) B's qualified housing expenses equal $14,000, which is the sum of the $3,000 qualified housing expenses relating to the housing at B's tax home and the $11,000 of qualified housing expenses relating to the qualified second household.

Example (2). The facts are the same as in example (1), except that town X is located in a hardship area. The qualified housing expenses relating to the housing at B's tax home equal $10,000, which is the full value of B's housing. The amount of qualified housing expenses relating to the qualified second household equals $11,000 and is computed in the same manner as in paragraph (b) of example (1). Thus, B's qualified housing expenses equal $21,000.

Example (3). The facts are the same as in example (1), except that there is no qualified second household, the cost-of-living differential specified in the 1980 cost-of-living table for country F (the location of B's tax home) is $3,000, and town X is located in a hardship area. The base housing amount for housing at B's tax home equals $6,000—20 percent of $30,000 ($48,000 worldwide earned income less the $3,000 cost-of-living differential, the $10,000 living expenses and the $5,000 hardship area differential). Thus, the amount of B's qualified housing expenses equals $4,000. Although B's tax home is located in a hardship area, B cannot claim as qualified housing expenses the full value of the housing provided at B's tax home, since B does not maintain a qualified second household.

§ 1.913–7 Qualified school expenses.

(a) *Qualified school expenses.* Qualified school expenses are reasonable school expenses incurred by or on behalf of the taxpayer for the education of a dependent of the taxpayer at levels equivalent to grades kindergarten through 12.

(b) *School expenses*—(1) *In general.* School expenses include tuition, fees, the cost of books, other amounts required by the school such as uniforms, and the cost of local transportation. Optional expenses, such as the cost of optional field trips or extracurricular activities, are not school expenses. If an adequate U.S.-type school is not available within a reasonable commuting distance (defined in § 1.913–3(f) of the taxpayer's tax home, the expenses of room and board for the dependent and the cost of transportation between the school and the taxpayer's tax home at the beginning and the end of the school year and during vacation periods are also school expenses. The cost of transportation includes transfer costs to and from the airport, airport taxes, exit fees or nonrefundable deposits made in order to leave the country, meals in route, and costs of involuntary stopovers in route. The cost of transportation does not include the costs of voluntary stopovers in route.

(2) *Limitation*—School expenses are qualified school expenses only to the extent that—

(i) They are not expenses for which a credit is claimed pursuant to section 44A (relating to child care) or for which a deduction is claimed pursuant to section 213 (relating to medical expenses);

(ii) They are not expenses for which the taxpayer or the taxpayer's spouse is compensated by an allowance such as the "school away from post" education allowance which is excluded from gross income under section 912;

(iii) They are attributable to education during a period in which the taxpayer's tax home is in a foreign country and the taxpayer qualifies under § 1.913–2(a) for the section 913 deduction; and

(iv) They are attributable to education during a period in which the dependent resides with the taxpayer at the taxpayer's tax home or in a qualified second household.

(c) *Reasonable expenses.* If an adequate U.S.-type school is available within a reasonable commuting distance (as defined in § 1.913–3(f) of the taxpayer's tax home, the taxpayer's dependents may attend school elsewhere, but tuition is considered reasonable only to the extent that it does not exceed the amount which would be incurred with respect to the school which is within commuting distance. If two or more adequate U.S.-type schools are available within a reasonable commuting distance of the taxpayer's tax home, tuition is considered reasonable only to the extent that it does not exceed the amount which would be incurred with respect to the least expensive of those schools. Round-trip transportation expenses are reasonable only to the extent that they do not exceed the lowest reserved coach or economy rate which is offered without advance booking on the day and at the time of day that the dependent travels. First class fares are considered reasonable only if no coach or economy accommodations are provided to any passengers on the particular flight or if the dependent is required to use first class accommodations because of physical impairment. In addition, the cost of transportation by modes other than air (including ship, rail, and automobile) is not considered reasonable to the extent that the cost of transportation by such other modes exceeds the cost of transportation by air.

(d) *Availability and adequacy.* A school is not considered available under

paragraphs (b) and (c) of this section if the school will not accept the taxpayer's dependents for enrollment. A school is not adequate if, because of physical impairment or learning disabilities, the dependent is in need of special educational facilities or training which the school does not provide. A school is not adequate if the dependent desires a college preparatory curriculum and the school does not offer such a curriculum. In addition, a school is not adequate if it is under religious auspices which require religious training or infuse religious training in secular courses and the taxpayer does not send the dependent to another school under the same religious auspices. A school will be considered adequate even though it does not offer enrichment programs, if such programs would not ordinarily be offered in public elementary or secondary schools in the United States. Examples of such enrichment programs are a swimming team or orchestral training.

(e) *U.S.-type school.* A U.S.-type school is any school which offers a curriculum which—

(1) Is taught in English;

(2) Is comparable to that offered by accredited schools in the United States; and

(3) Would qualify the student for graduation if the student were to transfer to a U.S. school.

(f) *Special rules for qualified second households.* If the taxpayer maintains a qualified second household (defined in § 1.913–3(b)), the location of the taxpayer's qualified second household rather than the taxpayer's tax home is to be used to determine what constitutes school expenses under paragraph (b)(1) of this section and whether school expenses are reasonable under paragraph (c) of this section.

§ 1.913–8 Qualified home leave transportation expenses.

(a) *In general.* Qualified home leave transportation expenses are the resonable expenses incurred by or on behalf of the taxpayer for the transportation during the taxable year of the taxpayer or of the taxpayer's spouse or dependents. The expenses must be incurred for round-trip transportation from the location of the taxpayer's tax home (or, with respect to the spouse and dependents, from a qualified second household) to the taxpayer's present or most recent principal residence (whether owned or rented) in the United States or to the port of entry in the continental United States (excluding Alaska) which is nearest to the taxpayer's tax home (or qualified second household). Qualified transportation expenses include transfer costs to and from the airport, airport taxes, exit fees or nonrefundable deposits made in order to leave the country, meals in route, and the costs of involuntary stopovers in route. The cost of transportation does not include the costs of voluntary stopovers in route.

(b) *Limitations*—(1) *One trip for each 12-month period abroad.* Qualified transportation expenses include the cost of no more than one round trip per person for each period of 12 consecutive months (which do not overlap) during which—

(i) The taxpayer's tax home is in a foreign country; and

(ii) The taxpayer qualifies under § 1.913–2(a) for the section 913 deduction.

The trip can occur before completion of a 12-month period.

(2) *Spouse and dependents.* Home leave transportation expenses may be claimed for the transportation of a spouse or dependent only if, at the time of the transportation, the spouse or dependent resides with the taxpayer at the taxpayer's tax home or in a qualified second household.

(3) *Double benefits denied.* Qualified transportation expense for each period of 12 consecutive months must be reduced by the amount of any allowance which is granted to the taxpayer or the taxpayer's spouse for purposes of home leave transportation at any time during that period of 12 consecutive months and which is excluded from gross income under section 912.

(c) *Reasonableness.* In determining whether transportation expenses are reasonable, the rules of § 1.913–7(c) (qualified school expenses) as they relate to transportation apply.

§ 1.913–9 Hardship area amount.

(a) *Hardship area amount.* The hardship area amount for an entire taxable year equals $5,000 multiplied by the following fraction:

$$\frac{\text{The number of qualifying days.}}{\text{The total number of days in the taxable year.}}$$

(b) *Qualifying days.* The number of qualifying days is the total number of calendar days in the taxable year during which the following requirements are satisfied:

(1) The taxpayer's tax home is located in a hardship area (defined in § 1.913–3(e)); and

(2) The taxpayer qualifies under § 1.913–2(a) for the section 913 deduction.

A taxpayer's tax home is not considered to be located in a hardship area during any day for which the area where the taxpayer's tax home is located is not designated as a hardship area. To determine the number of days during which the taxpayer's tax home is located in an area designated as a hardship area, see the hardship area list. (The hardship area list is contained in the instructions to Form 2555 or may be obtained from the Director of International Operations, CP:OIO:8, Internal Revenue Service, Washington, D.C. 20225. Taxpayers who wish to apply for a hardship area determination must apply to the State Department Allowances Staff, Department of State, Washington, D.C. 20520.

§ 1.913–10 Married couples with two qualifying spouses.

(a) *In general.* Subject to the rules of this section, in the case of a married couple both spouses of which qualify for the deduction provided in section 913, both spouses may claim the benefit of the deduction. If both spouses claim the benefit of section 913 directly as qualifying taxpayers, however, neither may claim any benefits of section 913 relating to a qualified second household maintained for the other spouse. If one spouse foregoes the benefits which that spouse, as a qualifying taxpayer, could claim under section 913, the other spouse may claim the benefits of section 913 relating to a qualified second household maintained for the first spouse. In such case, the earned income of both spouses is considered in computing the foreign earned income limitation under § 1.913–4 and base housing amount under § 1.913–6(c) of the spouse who claims the benefits of section 913. The rules in paragraphs (b) through (g) of this section apply only to married couples both spouses of which qualify for the deduction provided in section 913 and neither spouse of which claims any benefits relating to a qualified second household maintained for the other spouse.

(b) *Foreign source earned income limitation.* If separate returns are filed and both spouses claim the section 913 deduction, the foreign source earned income limitation for purposes of the separate return of each spouse is computed as provided in § 1.913–4, except that it is to be computed solely on the basis of the earned income derived by that spouse (without regard to community income laws). Otherwise, the limitation is computed as provided in § 1.913–4—that is, on the basis of the combined earned income of both spouses unless they maintain separate abodes.

(c) *Cost-of-living differential.* Except as provided in paragraph (g) of this section, only one cost-of-living

differential is permitted for the couple. If separate returns are filed, each spouse's cost-of-living differential equals one-half of the differential computed for the couple.

(d) *Qualified housing expenses*—(1) *Expenses.* Except as provided in paragraph (g) of this section, a married couple may claim qualified housing expenses with respect to only one abode.

(2) *Base housing amount.* If separate returns are filed and both spouses claim the section 913 deduction, the base housing amount for purposes of the separate return of each spouse is computed as provided in § 1.913–6(c), except that it is to be computed solely on the basis of the earned income derived by that spouse (without regard to community income laws). The aggregate of the qualified housing expenses which may be claimed on separate returns may not exceed, however, the amount which would be computed for the couple if a joint return were filed. If separate returns are not filed or if both spouses do not claim the section 913 deduction, the base housing amount is computed as provided in § 1.913–6(c)—that is, on the basis of the combined earned income of both spouses unless they maintain separate abodes.

(e) *Qualified home leave transportation expenses.* Pursuant to § 1.913–8(b)(3), a married couple may not include as qualified home leave transportation expenses the cost of more than one round trip for each spouse or dependent for each period of 12 consecutive months during which the couple's tax home is in a foreign country, even though both spouses independently qualify under § 1.913–2(a) for the section 913 deduction.

(f) *Hardship area amount and joint returns.* Subject to the rules of § 1.913–9, each spouse may claim a hardship area amount. If joint returns are filed, however, the hardship area amount determined for each spouse may not exceed the foreign earned income limitation computed as provided in § 1.913–4, except that it is to be computed solely on the basis of the earned income derived by that spouse (without regard to community income laws).

(g) *Separate tax homes*—(1) *In general.* A married couple that maintains separate abodes may claim a cost-of-living differential and qualified housing expenses with respect to each abode if—

(i) The abodes are not within a reasonable commuting distance of each other; and

(ii) The spouses have different tax homes which are not within a reasonable commuting distance of each other.

(2) *Joint returns.* If under paragraph (g)(1) a cost-of-living differential or qualified housing expenses are claimed with respect to the separate abode of each spouse and a joint return is filed, the aggregate of the following amounts may not exceed the foreign earned income limitation computed as provided in § 1.913–4 solely on the basis of the earned income derived by each spouse (without regard to community income laws):

(i) The cost-of-living differential determined as provided in § 1.913–5 with respect to that spouse's tax home;

(ii) The qualified housing expenses incurred with respect to that spouse's abode determined by using a base housing amount computed as provided in § 1.913–6(c) solely on the basis of the earned income derived by that spouse (without regard to community income laws); and

(iii) The hardship area amount for that spouse.

§ 1.913–11 Married couples with community income.

(a) *Joint return.* Married couples with community earned income who file a joint return must compute their section 913 deduction under the rules of §§ 1.913–1 through 1.913–10. Where relevant, those rules instruct taxpayers with community income to disregard community income laws and treat the income earned by each spouse solely as that spouse's income.

(b) *Separate returns.* Married couples with community earned income (other than taxpayers to whom section 879 applies) who file separate returns must first compute the section 913 deduction as if they filed a joint return. One-half of that amount is the section 913 deduction to be claimed by each spouse on a separate return.

§ 1.913–12 Returns and extensions.

See § 1.911–6(b) relating to returns and extensions for taxpayers qualifying for the section 913 deduction.

§ 1.913–13 Effective date.

Sections 1.913–1 through 1.913–12 apply to taxable years beginning after December 31, 1978. Those sections also apply to the taxable year beginning during 1978 of taxpayers who do not make an election pursuant to section 209(c) of the Foreign Earned Income Act of 1978 (Pub. L. 95–615, 92 Stat. 3109) to have section 911 under prior law apply to that taxable year.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805) and, in part, under the authority contained in section 913(m) of the Code (92 Stat. 3106; 26 U.S.C. 913(m)).

Par. 3. The sixth sentence of paragraph (d) of § 1.953–2 is amended to read as follows:

§ 1.953–2 Actual United States risks.

* * * * *

(d) *Lives or health of United States residents.* * * * In determining the country of residence of an insured, the principles of §§ 1.871–2 to 1.871–5 inclusive and of § 1.913–2(b), relating to the determination of residence and nonresidence in the United States and of foreign residence, shall apply. * * *

* * * * *

Par. 4. Paragraph (a)(3) of § 1.981–1 is amended to read as follows:

§ 1.981–1 Foreign law community income for taxable years beginning after December 31, 1966.

(a) *Election for special treatment.* * * *

(3) *Determination of residence.* The principles of paragraphs (a)(2) and (b)(7) of § 1.911–1 (26 CFR § 1.911–1 (1978)) shall apply in order to determine for purposes of this paragraph whether a U.S. citizen is a *bona fide* resident of a foreign country or countries during the entire taxable year. The principles of §§ 1.871.2 through 1.871–5 shall apply in order to determine whether the alien spouse of a U.S. citizen is a nonresident during the entire taxable year.

* * * * * *

Par. 5. The second sentence of paragraph (c)(4)(ii) of § 1.1303–1 is amended to read as follows:

§ 1.1303–1 Eligible individuals.

* * * * *

(c) *Individuals receiving support from others.* * * *

(4) *Spouse supported by others.* * * *

(ii) * * * For the definition of the term "earned income," see section 911(b) and § 1.911–2(b).

* * * * *

Par. 6. Paragraph (c) of § 1.6073–4 is redesignated as paragraph (d), and a new paragraph (c) is inserted to read as follows:

§ 1.6073–4 Extension of time for filing declarations by individuals.

* * * * *

(c) *Residents outside the United States.* In the case of a U.S. resident living or traveling outside the United States and Puerto Rico on the 15th day of the 4th month of a taxable year

beginning after December 31, 1978, an extension of time for filing the declaration of estimated tax otherwise due on or before the 15th day of the 4th month of the taxable year is granted to and including the 15th day of the 6th month of the taxable year.

(d) *Addition to tax applicable.* * * *

Par. 7. The caption of § 1.6081–2 is revised and paragraph (a)(6) is inserted before the flush language of paragraph (a) of such section. Section 1.6081–2 as so amended reads as follows:

§ 1.6081–2 Extensions of time in the case of certain partnerships, corporations, and U.S. citizens and residents.

(a) *In general.* * * *

(6) U.S. residents living or traveling outside the United States and Puerto Rico, including persons in military or naval service on duty outside the United States and Puerto Rico but only with respect to taxable years beginning after December 31, 1977.

* * * * *

PART 5b [DELETED]

Par. 8. Since no sections remain in Part 5b, the part is deleted.

[FR Doc. 80–35989 Filed 11–14–80; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 207

Banana River, Cape Canaveral Air Force Station—Restricted Area; Navigation Regulations

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army, Corps of Engineers is establishing a restricted area in the Banana River adjacent to the Cape Canaveral Air Force Station, Patrick Air Force Base, Florida. The restricted area is necessary to prevent the entry of unauthorized vessels into the turning basin for security and safety purposes.

EFFECTIVE DATE: Effective on December 1, 1980.

ADDRESS: HQDA, DAEN–CWO–N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard at (202) 272–0200, or Mr. Lonnie Shepardson at (904) 791–2887.

SUPPLEMENTARY INFORMATION: On July 9, 1980, the U.S. Army Corps of Engineers published the proposal to establish a restricted area under 33 CFR 207.171b in the Notice of Proposed Rulemaking section of the Federal Register (45 FR 46094). These proposed regulations would establish a restricted area in the Banana River at the Cape Canaveral Air Force Station, Florida. There were no comments received in response to the Notice of Proposed Rulemaking. The Department of the Army has determined that the establishment of the restricted area is in the national interest. Accordingly, 33 CFR 207.171b is established as set forth below.

Note.—The Department of the Army has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under EO 12044, Improving Government Regulations (43 FR 12661, March 24, 1979).

(40 Stat. 266; 33 U.S.C. 1)

Dated: September 12, 1980.

Michael Blumenfeld,

Assistant Secretary of the Army (Civil Works).

§ 207.171b Banana River at Cape Canaveral Air Force Station, Fla., restricted area.

(a) *The Area.* (1) Starting at the northern boundary of the existing Prohibited Area as described in 33 CFR 207.171a, and the shoreline at latitude 28°28′58″N; Longitude 80°35′26″W; thence westerly along the northern boundary of 207.171a to latitude 28°28′58″N, longitude 80°35′43″W; thence N 04°06′25″E for 4760.11 feet to latitude 28°29′45″N, longitude 80°35′39″W; thence due east to a point on the shoreline at latitude 28°29′45″N, longitude 80°35′11″W.

(b) *The Regulation.* (1) All unauthorized craft shall stay clear of this area at all times.

(2) The regulations in this section shall be enforced by the Commander, Eastern Space and Missile Center, Patrick Air Force Base, Florida, and such agencies as he may designate.

(40 Stat. 266; 33 U.S.C. 1)

[FR Doc. 80–35904 Filed 11–17–80; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[SW–6–FRL 1672–1]

Arkansas: Phase I Interim Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region 6.

ACTION: Approval of State program.

SUMMARY: The purpose of this notice is to grant Phase I interim authorization to the State of Arkansas for its hazardous waste management program.

In the May 19, 1980, Federal Register (45 FR 33063), the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), to protect human health and the environment from the improper management of hazardous wastes. Included in these regulations, which become effective 6 months after promulgation, were provisions for a transitional stage in which states could be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect.

On September 11, 1980, the State of Arkansas applied to EPA for Phase I interim authorization of its hazardous waste management program. On September 18, 1980, EPA issued in the Federal Register (45 FR 62170) a notice of the public comment period on the State's application. All comments received during this period have been noted and considered, as discussed below.

The State of Arkansas is hereby granted interim authorization to operate the RCRA Subtitle C hazardous waste management program in accordance with section 3006 (c) of RCRA and implementing regulations found in 40 CFR 123 Subpart F.

EFFECTIVE DATE: November 19, 1980.

FOR FURTHER INFORMATION CONTACT: Thomas D. Clark, Solid Waste Branch, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270 (214) 767–2645.

SUPPLEMENTARY INFORMATION: The State of Arkansas submitted its draft application for Phase I interim authorization on July 30, 1980. After reviewing the document, EPA identified four areas of major concern, namely: (1) Deficiencies regarding the right of citizens to intervene in enforcement actions; (2) restrictions on availability to EPA of State program information without restriction; (3) lack of detail in the Authorization Plan; and (4) deficiencies in the Memorandum of Agreement between EPA and the State.

On September 11, 1980, the State of Arkansas submitted its final application for Phase I Interim Authorization. Because the application did not adequately address the first two areas, the State submitted supplemental

information that satisfied EPA's concerns.

On September 26, 1980, the Arkansas Commission on Pollution Control and Ecology adopted a resolution endorsing the Federal requirements for public participation in enforcement actions.

In a letter dated September 29, 1980, the attorney authorized to sign the Attorney General's statement stated that "upon request from the EPA, any information obtained or used by this Department in the administration of the RCRA program may be available to EPA upon its request without any restrictions except those which are placed upon the EPA by any application laws or regulations." This letter clarified all stated reservations to possible restrictions on EPA's access to State program information.

The Authorization Plan submitted with the final application specifies with sufficient detail the actions the State will take to seek and obtain Phase II Interim Authorization and Final Authorization.

EPA's comments were satisfied in the Memorandum of Agreement submitted with the final application. In addition, the State submitted additional information about the Arkansas Transportation Commission's portion of the State hazardous waste program, including an elaboration of the Commission's responsibilities, enforcement authority, and coordination procedures.

As noticed in the Federal Register on September 18, 1980 (45 FR 62170), EPA gave the public until October 27, 1980, to comment on the State's application. EPA also held a public hearing in Little Rock, Arkansas, on October 20, 1980. The only comments received were presented at the public hearing.

An industry representative requested that the procedures for handling confidential information be revised so that EPA would request such information directly from the firm. The commenter was concerned that adequate protection of such information be provided.

EPA believes that confidential information will be adequately protected by the procedures set forth in 40 CFR Part 2. As discussed in the Attorney General's statement, there is adequate protection for information transmitted between EPA and the State through procedures that allow claims of confidentiality to be asserted and evaluated when such transfer of information occurs. Any information for which confidentiality is requested must be treated as such by both the State and EPA once the claim of confidentiality has been reviewed and its validity has been accepted.

The second commenter remarked that there were no guidelines or specifications for equipment to be used by transporters of hazardous wastes. The standards for transporters can be found in 40 CFR Part 263. Packaging requirements may also be found in 40 CFR Part 262. The other comment related to whether the State would have an adequate well-trained staff and proper funding to operate the program. EPA believes the State has adequate resources to operate Phase I of the program under interim authorization. The Department of Pollution Control and Ecology has submitted a budget to the State Legislature that should provide adequate resources to meet EPA's requirements for Phase II Interim Authorization. This budget request, of course, is subject to approval by the State Legislature.

Dated: November 10, 1980.

Adlene Harrison,

Regional Administrator.

[FR Doc. 80-35894 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 180

[PH FRL 1673-4; PP 9E2248/R289]

Malathion; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the insecticide malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate). This regulation was requested by the Interregional Research Project No. 4 (IR-4). This regulation establishes the maximum permissible level for residues of malathion on flax seed at 0.1 part per million (ppm) and flax straw 1.0 ppm.

EFFECTIVE DATE: Effective on November 18, 1980.

ADDRESSES: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Clinton Fletcher, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of October 10, 1980 (45 FR 67398) that the Interregional Research Project No. 4 (IR-4) has submitted a pesticide petition (PP 9E2248) to the EPA. The petition proposed the establishment of tolerances for flax seed at 0.1 ppm and flax straw at 1.0 ppm. No comments or requests for referral to an advisory committee were received by the agency, in response to this notice of proposed rulemaking.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. It is concluded that the tolerances will protect the public health. Therefore, 40 CFR Part 180 is amended as set forth below.

Any person adversely affected by this regulation, may within 30 days after publication of this notice in the Federal Register, file written objections with the Hearing Clerk, EPA, Rm. E-3708 (A-110), 401 M St. SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This regulation has been reviewed and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective on: November 18, 1980.

(Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e)))

Dated: November 13, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart C of 40 CFR Part 180 is amended by alphabetically inserting "flax seed" and "flax straw" in the table under § 180.111 to read as follows:

§ 180.111 Malathion; tolerances for residues.

* * * * *

Commodities	Parts per million
Flax seed	0.1
Flax straw	1.0

[FR Doc. 80-35896 Filed 11-17-80; 8:45 am]
BILLING CODE 6560-32-M

40 CFR Part 180

[PH-FRL-1673-5; PP 9E2233/R287]

O,O-Dimethyl S-[(4-OxO-1,2,3-Benzotriazin-3(4H)-yL) Methyl[Phosphorodithioate; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the insecticide *O,O*-dimethyl *S*-[(4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl] phosphorodithioate on parsley (roots) at 2.0 parts per million (ppm) and parsley (leaves) at 5.0 ppm. This regulation was requested by the Interregional Project No. 4 (IR-4). This regulation establishes the maximum permissible level for residues of the subject insecticide in or on parsley (roots) at 2.0 ppm and parsley (leaves) at 5.0 ppm.

EFFECTIVE DATE: Effective on November 18, 1980.

ADDRESS: Written objections may be filed with the: Hearing Clerk, Environmental Protection Agency, Rm. 3708 (A-110), 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Clinton Fletcher, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-124, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of September 26, 1980 (45 FR 63888) that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a pesticide petition (PP 9E2233) to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of New Jersey.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the subject insecticide in or on the raw agricultural commodities parsley leaves at 0.5 and parsley roots at 2.0 ppm.

The data submitted in the petition and all other relevant material have been evaluated. The insecticide is considered useful for the purpose for which the tolerances are sought.

Thus, based on the information considered by the agency and the insignificance of parsley roots and leaves in the diet, it is concluded that the tolerances of 2.0 ppm in or on parsley (roots) and 5.0 ppm in or on parsley (leaves) established by amending 40 CFR Part 180 would protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may on or before December 18, 1980 file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St., SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. If a hearing is granted, the objections must be supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective Date: November 18, 1980.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)))

Dated: November 13, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart C of 40 CFR Part 180 is amended by alphabetically inserting the raw agricultural commodities "parsley, leaves" and "parsley, roots" in the table under § 180.154 to read as follows:

§ 180.154 O,O-dimethyl S-[(4-oxo-1,2,3-benzotriazin-3(4H)-yl)] methyl] phosphorodithioate; tolerances for residues.

* * * * *

Commodity	Parts per million
Parsley, leaves	5
Parsley, roots	2

[FR Doc. 80-35897 Filed 11-17-80; 8:45 am]
BILLING CODE 6560-32-M

40 CFR Part 180

[PH-FRL 1673-6; PP 5E1564/R280]

Carbaryl; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate), including its hydrolysis product (1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate) on sunflower seeds at 1 part per million (ppm). This regulation was requested by the Interregional Research Project No. 4 (IR-4). This regulation will establish the maximum permissible level for residues of carbaryl in or on sunflower seeds.

EFFECTIVE DATE: Effective on November 18, 1980.

ADDRESSES: Written objections may be submitted to the: Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Clinton Fletcher, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. R-124, 401 M St. SW., Washington, D.C. 20460, (202-426-0223).

SUPPLEMENTARY INFORMATION: EPA issued a notice that published in the Federal Register of October 7, 1980 (45 FR 66484) that the Interregional Research Project 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted a pesticide petition (PP 5E1564) to EPA on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of North Dakota and Minnesota.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues

of the insecticide carbaryl (1-naphthyl *N*-methylcarbamate), including its hydrolysis product, 1-naphthol, calculated as 1-naphthyl *N*-methylcarbamate, in or on the raw agricultural commodity sunflower seeds at 1 ppm.

The data submitted in the petition and all other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought.

The metabolism of carbaryl is adequately understood and an adequate analytical method (colorimetry) is available for enforcement purposes. The existing tolerances in poultry fat, meat and eggs will adequately cover any secondary residues occurring from the sunflower feed items. Even though there are no meat and milk tolerances, there are existing tolerances (5–100 ppm) on a number of feed items (e.g., alfalfa hay, barley fodder, corn fodder and forage, cottonseed, etc.). Considering the established tolerances for these feed items, the agency believes that the use of carbaryl-treated sunflower hulls, meal, and soapstock will not result in an increase in the carbaryl residue burden in livestock.

Thus, based on the above information considered by the agency it is concluded that the tolerance of 1 ppm in or on sunflower seed established by amending 40 CFR Part 180 would protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, on or before December 18, 1980, file written objections with the Hearing Clerk, EPA, Rm. M-3708, (A-110), 401 M St., SW., Washington, D.C. 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested the objections must state the issues for the hearing. If a hearing is granted, the objections must be supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective date: November 18, 1980.

(Sec. 408(e), 68 Stat. 514, (21 U.S.C. 346a(e))).

Dated: November 13, 1980.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Therefore, Subpart C of 40 CFR Part 180 is amended by alphabetically inserting "sunflower seeds" under § 180.169 to read as follows:

§ 180.169 Carbaryl; tolerances for residues.

* * * * *

Commodity	Parts per million
* * * * *	
Sunflower seeds	1
* * * * *	

[FR Doc. 80-35898 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-32-M

40 CFR Part 257

[SWH-FRL 1670-1]

Criteria for Classification of Solid Waste Disposal Facilities and Practices; Interim Final Regulations

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of information and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is today making available to the public for comment two documents on the factors affecting accumulation of cadmium by food-chain crops grown on land amended with solid waste containing cadmium. These documents were submitted to EPA after the close of the comment period on the interim final regulations, which were developed under authority of both the Resource Conservation and Recovery Act [Sections 1008(a)(3) and 4004(a)] and the Clean Water Act [Section 405(d)]. These documents, as well as comments received as a result of this notice, will be considered by EPA in the development of the final regulations.

DATES: Comments on these documents are due no later than January 2, 1981. Since the issues addressed in these documents are relatively narrow in scope, the Agency believes that the 45 day comment period will provide sufficient opportunity for public review and comment.

ADDRESSES: Comments should be addressed to Robert J. Tonetti, Docket 4004.1, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Copies of these documents are available from Ed Cox, Solid Waste Information, U.S. EPA, 26 W. Saint Clair Street, Cincinnati, Ohio 45268, (513) 684-5362. Please use the SW number when requesting copies. If available copies run out, the Agency may charge $0.20 per page for photocopying

FOR FURTHER INFORMATION CONTACT: Robert J. Tonetti, (202) 755-9120.

SUPPLEMENTARY INFORMATION: On September 13, 1979, EPA published interim final regulations on the application of solid waste to land used for the production of food-chain crops (40 CFR Part 257.3-5). (44 FR 53438; 44 FR 54708, September 21, 1979) Paragraph (a) of § 257.3-5 specified limitations necessary to minimize the movement of cadmium into food-chain crops grown on sites where solid wastes are applied. A variety of mitigating factors, including controls on soil pH, soil cation exchange capacity (CEC), crops grown, alternative land uses, and both annual and cumulative cadmium additions, were provided in the regulation to achieve the above goal. The comment period on the interim final portions of the Criteria officially closed on November 20, 1979.

Since the close of the public comment period, the following two documents have been submitted to EPA:

(1) Effects of Sewage Sludge on the Cadmium and Zinc Content of Crops, Council for Agricultural Science and Technology (CAST), Report No. 83, September 1980 (SW-881).

This document was prepared by a task force of scientists involved in research regarding the effects of land application of sewage sludge on the quality of crops grown. The document evaluates available data on the effects on plants of single and repeated additions of cadmium and zinc (present in sewage sludge) to soils. The roles of sludge, soil, plant and climatic factors in the uptake of cadmium by food-chain crops are discussed. Potential factors which may be used to limit cadmium uptake by crops are reviewed. Previously unpublished research data are also available in this document.

(2) Report from the Western Regional Committee, W-124, Science and Education Administration—Cooperative Research (SEA-CR) Technical Research Committee, January 1980 (SW-882).

This brief document addresses whether or not the soil cation exchange capacity is a viable soil factor controlling the uptake of cadmium by crops grown on soils amended with sewage sludge. Current knowledge of annual and cumulative cadmium

additions to soils, and the resulting cadmium uptake by plants, is reviewed. Other soil factors which have been shown to affect cadmium uptake by plants are discussed. In addition, this document summarizes the development of the metal limitations recommended by the W-124 and North Central (NC-118) Regional Committees for the land application of sewage sludge.

EPA is making these documents available to the public today to solicit comments on the accuracy of the data presented and the validity of the conclusions reached. This is not to be construed as a reopening of the comment period on the Agency's interim final regulations, and commenters should limit their comments accordingly.

Dated: November 10, 1980.

Eckardt C. Beck,

Assistant Administrator.

[FR Doc. 80-35912 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control

42 CFR Part 74

Clinical Laboratories—Deletion of Requirement for License Fees

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Final rule; supplemental notice.

SUMMARY: The Department published a Final Rule (with subsequent comment period) in the Federal Register on April 22, 1980 (45 FR 26960), deleting the license fee requirements in 42 CFR 74.10(d). This requirement was applicable to laboratories licensed under the Clinical Laboratories Improvement Act of 1967. A 30-day comment period was provided. This Notice is to advise that no comments were received, and that the Final Rule stands, as published.

EFFECTIVE DATE: April 22, 1980.

FOR FURTHER INFORMATION CONTACT: Dr. Louis C. LaMotte, (404) 329-3824 or FTS: 236-3824.

Dated: October 30, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: November 7, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-36024 Filed 11-17-80; 8:45 am]

BILLING CODE 4110-86-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 63

[CC Docket No. 79-252; FCC 80-629]

Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor

AGENCY: Federal Communications Commission.

ACTION: Final rule (First Report and Order).

SUMMARY: The FCC has decided to reduce substantially or eliminate several of the tariff, entry, and exit rules now imposed upon those communications common carriers which it has determined lack market power (*i.e.*, the ability to control prices). Such carriers will be labeled as non-dominant. On the other hand, those carriers which the Commission has found to have the ability to control prices will be labeled as dominant and will be regulated as they are currently so that the Commission can insure that they do not exploit their market power to the detriment of the public.

DATES: Effective November 28, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael B. Fingerhut, Common Carrier Bureau (202) 632-6917.

Adopted: August 1, 1980.

Released: November 28, 1980.

By the Commissioner: Commissioner Washburn issuing a separate statement.

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I. Introduction

1. In passing the Communications Act of 1934, 47 U.S.C. §§ 151 et seq., Congress set out as a national policy the attainment and maintenance of "efficient Nation-wide and worldwide . . . communication service." 47 U.S.C. § 151. While the Commission has pursued difference policies over time in striving to achieve the goal, recognition that a monopolized market is not likely to function as efficiently as a competitive one has caused the Commission to adopt, and since 1959 to implement consistently, the common carrier policy of introducing competition into theretofore monopolized markets whenever technological and economic conditions led entrepeneurs to seek to enter.

2. We initiated this proceeding in order to adjust the agency's rate filing and facilities review procedures [1] in light of the advent of the entirely new kinds of firms now offering communications services. None of these firms shares the existing telephone companies' characteristic of offering both franchised monopoly local exchange service and participation in the joint provision of the vast majority of the nation's interexchange service. None holds a market position of significance measured in terms of market share.

3. Contemporaneously, and perhaps because of the introduction of some competition in these fields, the telecommunications industry has received increasing attention from economic commentators. Their writings have supported both the possibility of, and benefits to be derived from, this competition.[2] At the same time, however, they have also pointed out that the regulatory process itself may have both direct and indirect anticompetitive results which could

[1] The major elements of the tariff support material requirements at issue in the *Notice* were a cost of service study for all elements of costs for the most recent 12 months; a study containing a projection of costs for a 3 year period; and estimates of the effects of the changed or new matter upon the carrier's traffic and revenues from the service, and from the traffic and revenues from the other service classifications of the carrier, and upon the overall traffic and revenues of the carrier. In the case of most rate increases, the carrier must "submit all cost, marketing and other data on which it relies in justification of the rate increase and in appropriate form to serve as the carrier's direct case in the event the rate increase is set for hearing". 47 C.F.R. § 61.38. *See also* 47 C.F.R. § 61.58. Under Part 61 of our Rules, we now require all carriers regardless of their industry position and competitive posture to obtain prior authorizations for the construction or lease of interstate lines, the initiation of service, and the termination of service.

[2] *See, e.g.*, W. G. Shephard, "The Competitive Margin in Communication," *Technological Change in Regulated Industries* (W. Capron, ed. 1971).

impair or even frustrate the realization of the public interest benefits sought by the Commission's pro-competitive policies.[3]

4. The modest changes in procedural rules adopted today reflect our experience of the last two decades and recognize the advances in the state of learning concerning the regulatory system. Nevertheless, our analysis here is a static one since, consistent with the Notice, we have generally looked at the structure and performance of the telecommunications industry from the supply side, (i.e. on a facilities basis), comparing the costs of imposing the prevailing monopoly-oriented tariff, entry, and exit rules upon competitive carriers with the public benefits such regulation is supposed to produce. It is limited to those few classes of carriers where our cost/benefit analysis clearly demonstrates an excess of costs over benefits precisely because no public benefits from the application of these traditional rules to these non-dominant carriers is possible. We recognize, of course, that more substantial modifications in the system of regulation may be warranted especially since it has become increasingly apparent that some dominant firms offer both monopoly and competitive services which should be regulated differently. Indeed, in the *Notice* initiating this proceeding we raised questions concerning the legal authority of the Commission to forbear from imposing the regulatory mechanisms of Title II upon some or all of the service offerings of acknowledged common carriers as well as the Communications Act's definition of communications common carriers.[4] The consequences of answering these questions are potentially far more momentous than the measures adopted in this Order. While we intend to address these issues and their regulatory implications in a further proceeding upon which we shall act shortly, one possible result seems apparent. In those cases where a rough cost/benefit analysis suggests that the costs of continuing to regulate the service offerings of any carrier of class or carriers by means of the prevailing tariff, entry, and exit rules exceed the benefits of applying them, even though some benefits may be apparent because, for example, of limited power over price, we may well be able to dispense with such regulation.

5. In this decision, we have employed traditional concepts of the scope of the Act's coverage and merely modified agency-fashioned rules to restrict the paperwork burdens on firms to those situations where we believe the information contained in that paperwork will actually assist us in carrying out the mandate of our statute.[5] The tariff support rules were first adopted only ten years ago, *Tariffs-Evidence*, 25 F.C.C. 2d 957 (1970), and were applied to newly authorized competitive firms, without analysis or even express mention, in the Commission's decision on reconsideration. There we stated a willingness to amend the rules once we had obtained experience with their operation. *Tariffs-Evidence*, 40 F.C.C. 2d 149, 154.55 (1973). The facilities authorization rules, adopted in 1944, were similarly applied to competitive firms with only limited analysis.

6. We now believe we have the experience necessary to evaluate whether the cost support material required by our rules assists either other parties or ourselves in determining whether new rates are just, reasonable and not unreasonably discriminatory and whether the facilities regulatory procedures now in place are justified. For certain companies, those whose market position renders irrational the filing of rates in contravention of the Act's standards, we have concluded that the tariff support material submitted pursuant to these rules serves no useful purpose commensurate with the costs of compliance and therefore we have eliminated the requirement. We have not eliminated the requirements that rates be just, reasonable and non-discriminatory. We have merely changed the method by which we will police that requirement.

7. Similarly, our decision to alter the method of application required to expand an already authorized service stems from an analysis of whether the paperwork required of carriers by our rules is warranted given the information it contains. For certain classes of carriers the Commission has already decided basic questions of duplication of facilities, diversion of revenue, entry policy, and eligibility in general rulemakings which were judicially affirmed. *See, e.g., Specialized Common Carrier Services*, 29 F.C.C. 2d 870 (1971), *recon.*, 21 F.C.C. 2d 870 (1971), *recon.*, 31 F.C.C. 2d 1106 (1971), *aff'd sub nom. Washington Utilities and Transportation Commission v. FCC*, 512 F.2d 1142 (9th Cir.) *cert. denied*, 423 U.S. 836 (1975); and *Resale and Shared Use of Common Carrier Services*, 60 F.C.C. 2d 261 (1976), *recon.*, 62 F.C.C. 2d 588 (1977), *aff'd sub nom. AT&T v. FCC*, 572 F.2d 17 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978) *And see, Domestic Communications Satellite Facilities*, 35 F.C.C. 2d 844 (1972), *recon.*, 38 F.C.C. 2d 6654 (1972); *MTS and WATS Market Structure Inquiry*, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, FCC 80-463 (rel. August 25, 1980). Thus, the circuit by circuit, city by city applications now engaged in are mere reflections of the implementation of these already adopted threshold policy decisions.

8. Moreover, we do not believe that a company subject to competition from readily available alternative supply of its service can continue to obtain the additional revenue required to recoup the cost of over-investment in facilities. As a result, we have decided to modify our paperwork requirements under Section 214 of the Act, 47 U.S.C. § 214, to remove those burdens which we have found to be unnecessary to the accomplishment of the Commission's statutory function.

II. Background

A. Summary of Proposal

9. The policies we now adopt were initially proposed in our *Notice of Inquiry and Proposed Rulemaking*, 77 F.C.C. 2d 308 (1979) (hereafter *Notice*), in which we proposed to modify our rules to reflect changes in the industry over the last decade. We stated that with the emergence of many competitive telecommunications firms a new approach to rate, tariff and facilities regulation more accurately tailored to reflect the nature of such firms would allow these companies and the overall telecommunications industry to satisfy consumer demand more effectively than the undifferentiated set of rules theretofore applied.

10. The proposals in the *Notice* emanated from two basic principles. First, in order to retain business with prices above total costs a firm must possess market power and some firms in this industry do not. Similarly, in order to recoup losses incurred by pricing below costs, either immediately or even over the long term, market power is also required. Indeed, market power is often defined as the ability to maintain prices at levels unrelated to the costs of the good or service in question.

Second, enforcement of a system of regulation of business conduct imposes costs. These costs can be identified in two classes. There are the less significant administrative costs of compiling, maintaining, and distributing

[3] B. Owen and R. Braeutigam, *The Regulation Game: Strategic Use of the Administrative Process* (1978).

[4] *See Notice*, paras. 97-120.

[5] As noted in the *Notice of Inquiry and Proposed Rulemaking*, radio common carriers (RCCs), international record carriers (IRCs) and carriers in the Multipoint Distribution Service (MDS) were not included in this proceeding.

information necessary to comply with agency licensing and reporting requirements. More significant costs, however, are inflicted on society by the loss of dynamism which can result from regulation. Indeed, regulation sometimes creates what can only be called perverse incentives for the regulated firms.[6]

12. The Averch-Johnson effect, *i.e.*, rate of return regulation creates incentives that may distort the input choices of a regulated firm away from production at minimum cost, is one example.[7] The filing of public tariffs is another. Effective competition is clearly curtailed when firms are required to give advance notice of innovative marketing plans and have those initiatives be subject to public comment and regulatory review. The public posting of prices and the legal obligation to refrain from "unjust or unreasonable discrimination," 47 U.S.C. § 202(a), may result as well in artificially stabilizing prices to the consumer's eventual disadvantage.

13. The initial set of proposals contained in the *Notice* were directed only toward reducing, but not eliminating these costs. We examined the application of the rules under review to determine whether these costs were outweighed by benefits accruing to the public from their continuation. We found that some firms did not possess the economic attributes which appear necessary to engage in the conduct the rules were designed to help prevent.

14. Recognizing that the industry to which our rules have been applied had changed, we reevaluated the appropriateness of continuing the same regulatory program developed under different circumstances. We tentatively concluded that our system of regulation imposed significant costs on carriers and their customers, which in the case of some firms were not outweighed by their benefits. We therefore proposed to eliminate certain of these rules imposed on those carriers and create a presumption of lawfulness applicable to their rates.

15. To implement our proposal, we proposed to distinguish between carriers on the basis of their dominance or power in the marketplace and apply different regulatory rules to each. A carrier would be labelled dominant if it has substantial opportunity and incentive to subsidize the rates for its more competitive services with revenues obtained from its monopoly or near-monopoly services. We recognized that the power to keep prices above full costs not only meant the firm could violate the "just and reasonable rate" mandate of the Act, but also that it could inefficiently invest in new or additional facilities and still produce enough revenue to recoup these wasteful costs. We therefore proposed to continue to regulate these carriers essentially as we do today so that the Commission could insure that they did not exploit their market power to the detriment of the public.[8]

16. In contrast to the firms labelled dominant, we identified a class of firms not possessing the market power necessary to sustain prices either unreasonably above or below costs. We referred to such firms as non-dominant. As proposed in the *Notice*, the regulatory requirements imposed upon non-dominant carriers would be substantially reduced or even eliminated. Because these carriers generally lack the market power to charge rates or impose conditions of service that would contravene the Act (*Notice*, paras. 46–54), we would consider their tariff filings to be presumptively lawful. They would no longer be required by our Rules to submit extensive economic data to support their tariff filings [9] and they would only have to provide 14 days' notice to the public of proposed tariff changes.[10] Nor would we generally suspend their tariff filings unless a petitioner could make a strong showing of substantial and irreparable injury to competition, thereby harming the public.

17. To evaluate whether a suspension might be justified the Commission proposed using a four-part test similar to the one used by the courts in determining whether to grant a stay or preliminary injunction.[11] Specifically, a petitioner would have to show: (1) that there is a high probability that the tariff would be found to be unlawful after investigation (likelihood of success on the merits); (2) that any harm alleged to competition (which we believe accomplishes public interest benefits) would be more substantial than that to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing (*e.g.*, that the proposed rate is predatory); (3) that irreparable injury would be suffered if suspension does not issue; and (4) that the suspension would not otherwise be contrary to the public interest. We indicated, however, that suspension petitions filed by end users or consumers would be reviewed from a different perspective since their motives in filing such petitions would presumably be less subject to suspicion than those of competing carriers. (*Notice*, para. 60).

18. A non-dominant carrier would also be able to institute or discontinue service more easily under our proposed procedures. Upon grant of initial Section 214 authorization we would also grant a non-dominant carrier blanket authority for unlimited expansion of circuits into its authorized geographic service areas.[12] It would only be required to report additions of circuits 30 days after this service date. Conversely, in recognition that ease of exit is a necessary part of a truly competitive market, it could discontinue a service 30 days after notice to its customers and the Commission if no showing were made that a reasonable substitute service is not available.[13]

19. Although, as noted, the Commission determined that a carrier possesses market power if it has the ability to cross-subsidize its services

[6] *See, e.g.*, C. W. Needy, *Regulation-Induced Distortions*, 1978.

[7] H. Averch and L. Johnson "Behavior of a Firm Under Regulatory Constraint," 52 *American Economic Review*, 1053–69, (Dec. 1962).

[8] We announced, however, that we planned a fundamental reexamination of our current certification requirements for dominant carriers set forth in Part 63 of our Rules, 47 C.F.R. § 63, so as to develop a program less concerned with circuit-by-circuit oversight and more concerned with major additions to plant, including switching devices. We requested the parties to submit their views on possible ways to develop such a program for dominant carriers, but did not propose any specific rule. (*See Notice*, paras. 68–70). *See* n. 29, *infra*.

[9] 47 C.F.R. § 61.38. We would, however, continue to require a non-dominant carrier to submit with its tariff filing a concise information statement explaining its proposal and setting forth the basic rates, terms and conditions of service. Also, we proposed to require non-dominant carriers to submit annual financial data to the Commission. (*Notice*, Appendix D).

[10] Under our current rules, 47 C.F.R. § 61.58, all carriers must provide at least 90 days' notice of tariff filings involving a change in rate structure, a new service offering or rate increase; and 70 days' notice for all other tariff filings with the exception of filings involving such matters as editorial changes or corrections or the imposition of termination charges for which carriers need only give 15 days' notice. If a petitioner raises a substantial question that warrants more extensive consideration, the 14 day notice period can be extended as provided in Section 61.58(d) (which permits the Chief, Common Carrier Bureau to defer the effective date of any tariff filing made on less than 90 days' notice) so that action can be taken prior to the effective date. (*Notice*, para. 58).

[11] *See, e.g., Virginia Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921 (D.C. Cir. 1958); *Washington Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977). The Commission uses a similar test in acting on requests for stay. *See Amendment to Subpart F of Part 76 of the Commission's Rules*, 68 F.C.C.2d 1308 (1978); *IRC Scope of Operations*, FCC 80-364 (released July 1, 1980).

[12] We proposed to except video relay circuits via satellite from this policy because of the small number of applications involved and the substantial number of policy issues that have been raised in the past with respect to this service.

[13] If a petition to deny were filed, we would act on the petition prior to any discontinuance.

unlawfully, it did not promulgate any final standards or procedures to identify dominant firms. Instead, we requested commenting parties to focus on what criteria they believed would be useful in determining whether a carrier has market power or when it has achieved dominance.[14] However, after reviewing in some detail the current industry structure (*Notice*, paras. 17–28) and the state of competition between and among the various telecommunications carriers (*id.* paras. 29–37), we tentatively decided to classify AT&T, the independent telephone companies, and Western Union as dominant.[15] (*id.* paras. 81–88).

20. Finally, as indicated, we solicited separate comments on deregulatory options of a more fundamental nature.[16] Specifically, we asked the commenters to consider whether the Commission has discretion to forbear from imposing its full regulatory authority, especially that under Title II of the Act, on certain classes of carriers or whether certain providers of communications services, *e.g.*, resale or enhanced services providers, are common carriers within the meaning of the Act. The issues involved in this phase of the proceeding are not considered in this decision.

B. Overview of Comments

21. Direct and reply comments on the rules proposed in this phase of the proceeding have been filed by several certificated communications carriers, applicants for Section 214 authority, independent telephone companies, federal and state agencies, trade associations, professional sports organizations, CATV system operators, and users.[17] A list of those parties filing comments or reply comments is attached as Appendix B.

22. Generally, with the exception of AT&T and USITA, who oppose the dominant/non-dominant classification scheme on legal, economic, and policy grounds,[18] most of the commenting parties enthusiastically endorse the Commission's proposed two-tiered regulatory approach[19] and resulting reduction in regulatory burdens for non-dominant carriers.[20] They also support our tentative decision to classify at least AT&T as dominant.[21] The positions of the commenters on the status of other carriers differ, however, perhaps reflecting the fact that few commenters propose any specific criteria for determining dominance.

23. Western Union, for example, disputes our initial determination that it possesses sufficient market power in the record communications market to be classified as dominant. It is joined in this view by NTIA,[22] but others disagree.[23] Similarly those independent telephone companies filing comments object to their classification as dominant.[24] This position is supported by NTIA and USITA,[25] while others argue that at least some of the non-Bell telephone companies should be classified as dominant because of their ability to cross-subsidize unlawfully between local monopoly and competitive industry services.[26]

24. The CATV system operators would have us classify both terrestrial video relay and satellite carriers as dominant. They argue that an operator's dependence on the one terrestrial carrier serving the area for needed television signals gives these carriers significant market power while the scarcity of satellite transponder capacity and spectrum/orbit limitations put satellite carriers in a near-monopoly position.[27] Similarly, the State of Alaska urges us to classify RCA Americam as dominant. They point out that Alascom acquires the bulk of its satellite capacity from this carrier, and further, that no practical alternative exists for securing other facilities.[28] A detailed summary of the comments and reply comments is attached as Appendix C.

C. Summary of Decision

25. We have carefully and thoroughly weighed the positions and arguments of all commenting parties. On the basis of this review and our own analysis discussed in the Notice[29] we have decided (a) to adopt and make final our proposal to classify carriers either as dominant or non-dominant depending upon their power to control prices; and (b) to employ regulatory regimes more precisely designed to account for the

[14] In this regard, the Commission suggested several factors for discussion including: a carrier's share of the market for a particular tariffed service; whether a carrier is effectively rate regulated; whether the market for a particular service is workably competitive; the number of carriers involved in providing a particular service or practical substitutes for the service; and the relative size of carriers as measured by customer base, plant investment, R&D capability, overall company revenues; corporate structures such as affiliation with other carriers or non-regulated companies; and standing in the financial community.

[15] Also, because there appeared to be no effective competitive alternative to the provision of network television signals to CATV systems by terrestrial microwave carriers, we tentatively decided that these carriers should continue to be required to support rate increases for this service with 61.38 data. On the other hand, we proposed to relieve them of the burden established in *American Television Relay*, 63 F.C.C. 2d 911 (1977), *recon. denied*, 65 F.C.C. 2d 792 (1977), of justifying population sensitive rate structures and asked for comments on whether the prohibition against retransmission charges absent justification should be lifted.

[16] We also announced that we planned to terminate or otherwise settle certain pending dockets and related complaints on the basis of the policies and rules adopted here. In this regard, we requested and have received the views of several of the active parties to these cases and will issue shortly an order giving further guidance to the presiding Administrative Law Judges as to how they should proceed.

[17] Both the U.S. Telephone and Telegraph Corporation (UST&T) and the State of Alaska filed their direct comments after the due date, accompanying them with petitions for acceptance of late-filed comments. We grant the petitions and accept their comments.

[18] Both, however, support our goal of reducing unnecessary regulation if applied to all carriers. Direct Comments of AT&T, pp. 5–7; and Direct Comments of USITA, p. 13. *See also* Direct Comments of Rochester Telephone; Direct Comments of United Telecom; Direct Comments of Central Telephone; and Direct Comments of GTE Telephone.

[19] Several commenters suggest that we should forbear totally from regulating competitive non-dominant carriers or define certain providers of communication services, especially resellers, as not being common carriers under the Act and deregulating them totally. *See, e.g.*, Direct Comments of NTIA; Direct Comments of Metromedia; Direct Comments of the Commissioner of Baseball; Director Comments of MPAA; Direct Comments of the NBA and NHL; Direct Comments of ISA; and Reply Comments of ABC. As indicated, issues relating to forebearance from regulation and the definition of a "communications common carrier" are not being considered here.

[20] Several, however, have suggested modifications to our proposed streamlined tariff filing and facilities authorization procedures. Although Alascom does not oppose the Commission's proposal, it urges that the policies, if adopted, not be applied to the Alaska market. Direct comments of Alascom, *passim*.

[21] NTIA believes, however, tht the Commission should reduce its economic regulation of AT&T's competitive services as long as such safeguards as separate subsidiaries and improved cost accounting are adopted. NTIA's Direct Comments, p. 3.

[22] Direct Comments of NTIA, pp. 14–17.

[23] *See, e.g.*, Direct and Reply Comments of UST&T; Direct and Reply Comments of Graphnet; Direct Comments of American Facsimile Systems; and Letter of Western Union International.

[24] Direct Comments of GTE Telephone; Direct Comments of Rochester Telephone; Direct Comments of United Telecom; and Direct Comments of Central Telephone. *See also* Direct Comments of GTE Telenet.

[25] Direct Comments of NTIA, p. 15; Direct Comments of USITA, pp. 1–6.

[26] *See, e.g.*, Direct Comments of Tymnet, p. 7; Direct Comments of SPCC, p. 59.

[27] Direct Comments of Teleprompter; Reply Comments of NCTA; and Direct Comments of Multimedia Cablevision. These commenters also urge us to continue the heavy burden we now impose upon video relay carriers to justify the use of population sensitive rate structures. Similarly, the broadcasters argue that a population sensitive rate structure and retransmission charges have no relevance to them. *See* Direct and Reply Comments of ABC, CBS and NBC; Direct and Reply Comments of Garryowen Corporation. NTIA, argues, however, that the video relay market is sufficiently competitive to permit its "deregulation". NTIA's Direct Comments, p. 17.

[28] Direct Comments of the State of Alaska. In reply, RCA Americam states that it opposes being classified as a dominant carrier although it would not object to being required to justify rate increases to Alascom or obtain Section 214 authorizations before discontinuing service to Alascom.

[29] Except to the extent modified here, we incorporate this analysis by reference.

attributes of firms in each denomination as proper and warranted by the public interest.

26. We will consider a carrier to be dominant if it has market power (*i.e.*, power to control price).[30] We find that AT&T and the independent telephone companies come within the definition of dominant carriers. Moreover, due to what are perhaps transitory factors, especially shortages of the supply of facilities relative to the demand, Western Union, domestic satellite carriers (Domsats), Domsat resellers, and the miscellaneous common carriers (MCCs) possess market power sufficient to justify continuing the application of the current regulatory system to them.[31] As to these carriers, a continuing assessment of the costs and benefits of imposing the dominant-carrier regulatory requirements clearly is warranted. We will be receptive to the presentation of evidence that circumstances have evolved in a manner which permits the easing of the regulatory requirements to which any carrier or class of carriers is subject. Indeed, it may be that several of these carriers could qualify for our streamlined procedures since they may become subject to sufficient potential competition to assure good performance without detailed government intervention.

27. All other carriers will be classified as non-dominant and, as such, brought within the streamlined tariff filing and facilities authorizations procedures proposed in the Notice and finalized here. We find several changes to these rules are warranted, however, especially in the case of those governing facilities authorizations. These will further reduce the regulatory burdens for non-dominant carriers. First, non-dominant carriers will only be required to report circuit additions in their authorized service areas on a semi-annual basis, rather than every 30 days as originally proposed. Second, initial carrier certification under Section 214 will be conferred for the continental United States unless the applicant asks otherwise.[32] Finally, non-dominant carriers will not be required to submit the annual financial information proposed in Appendix D of the Notice.

28. We now turn to a discussion of this new scheme itself, focusing on our legal authority to adopt a two-tiered regulatory structure, the criteria we have used to determine dominance, and the objections raised against the specific rules for non-dominant carriers.

III. Legal Considerations

29. It is, of course, well established that the Commission has "broad discretion in choosing how to regulate." *AT&T v. FCC*, 572 F.2d at 26. As the Supreme Court has long recognized, the dynamic and rapidly changing nature of the communications industry requires "that the administrative process possess sufficient flexibility to adjust itself to these factors." *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 138 (1940). *See also, United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968); and *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943). Indeed "regulatory practices and policies that will serve the public interest today may be quite different from those that were adequate for that purpose in 1910, 1927 or 1934 * * *" *Washington Utilities & Transportation Comm. v. FCC*, 512 F.2d at 1157, and thus, "one of the most significant advantages of the administrative process is its ability to adapt itself to new circumstances in a flexible manner * * *" *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. 775, 811 (1978).[33]

30. This broad power to fashion rules appropriate to the problems confronted is perhaps even more expansive in the area of agency regulation of rates. *Aeronautical Radio, Inc. (ARINC) v. FCC*, No. 77-1333 (D.C. Cir. June 24, 1980) (pet. for rehearing pending) Slip Op. at 13 and cases cited there. The Supreme Court has repeatedly recognized that agencies operating under statutes similar to the Communications Act have been vested with a "legislative" power regarding rates. *Permian Basin Area Rate Cases*, 390 U.S. 747, 776 (1968), *quoting, Los Angeles Gas. & Electric Co. v. Railroad Comm'n*, 289 U.S. 287, 304 (1933). While this power is not unbounded *cf. FCC v. RCA Communications, Inc.*, 346 U.S. 86, 90 (1953), it is broad enough "to make the pragmatic adjustments which may be called for by particular circumstances." *Permian Basin*, 390 U.S. at 777, *Quoting, FPC v. Natural Gas Pipeline Co.*, 315 U.S. 375, 586 (1942). This power specifically has been held to encompass agency programs involving circumstances not dealt with in the organic statute. *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968). *See also FPC v. Texaco*, 417 U.S. 380, 387 (1974); *Permian Basin*.

31. In discussing the issue before it, the *Permian Basin* Court emphasized that "the breadth and complexity of the Commission's responsibilities demand that it be given every reasonable opportunity to formulate methods of regulation appropriate for the solution of its intensely practical difficulties", 390 U.S. at 790, stating that: "[W]e are, in the absence of compelling evidence that such was Congress' intent, unwilling to prohibit administrative action imperative for the achievement of an agency's ultimate purposes." *Id.* at 780.[34]

32. As we have discussed in *Notice*, (para. 97), and in the Introduction to our decision (paras. 1-8) adopted today, we have determined that our "ultimate purpose," as defined in Section 1 of the Act "to make available, so far as possible, to all the people of the United States a rapid, efficient * * * communication service with adequate facilities at reasonable charges * * *", 47 U.S.C. 151, requires the action we take today. So long as our regulation imposes costs on some firms, and thus on the public, not exceeded by the benefits generated thereby, the provision of communications service by those firms can never be as "efficient" nor can the charges be as "reasonable"

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[30] In our *Second Computer Inquiry* decision, 77 F.C.C. 2d 384 (1980), we made a determination as to which carriers should be required to provide unregulated equipment and services only through a separate subsidiary. Market power in basic service markets was only part of our calculus there which included, *inter alia*, our assessment as to the ability and incentives of carriers to broadly extend their market power into enhanced service and customer premise equipment markets through ratepayer-funded strategies, as well as the recognition that there are economic costs imposed by a separate subsidiary requirement. On Reconsideration, we imposed the requirement only upon AT&T.

[31] We intend to issue in the near future a proposal revising substantially our current Section 214 procedures applicable to dominant firms, especially AT&T. We believe this rulemaking will relieve dominant carriers of the burdens of amassing and filing information which is not informative in relation to the goals of the Act's facilities regulation program. Moreover, we also intend to design a system which will enable the Commission to evaluate facilities proposals in a more appropriate context. See para. 115, *infra*.

[32] Although satellite carriers are to be labelled dominant, we have decided that prior Section 214 authorization will no longer be required for each channel (transponder) activated. Rather, we will merely impose a reporting requirement. This will avoid unnecessary duplication. Applications now pending before us will be evaluated on a case-by-case basis.

[33] *See also National Resources Defense Council Inc. v. SEC*, 606 F.2d 1031, 1056 (D.C. Cir. 1979) ("An agency is allowed to be the master of its own house"); *Permian Basin Area Rate Cases*, 390 U.S. 747, 784 (1968) ("Administrative authorities must be permitted * * * to adopt their rules and policies to the demands of changing circumstances."); *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967) ("* * * breadth of agency discretion is, if anything at zenith when action * * * relates primarily * * * to the fashioning of policies * * * in order to arrive at maximum effectuation of Congressional objectives"); *Philadelphia Television Broadcasting Co. v. FCC*, 359 F.2d 282 (D.C. Cir. 1966); and *FERC v. Pennzoil Producing Co.*, 439 U.S. 508 (1979).

[34] The Court later applied this principle to the communications field in *United States v. Southwestern Cable Co.*, 392 U.S. 157 (1968).

as they might be in the absence of such artificial costs.

33. It is equally, well-established that Section 4(i) of the Act, 47 U.S.C. § 154(i),[35] provides us with the statutory basis to enact regulations and adopt policies codifying our view of the public interest. *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. at 793. Indeed, it has been held that Section 4(i) of the Communications Act enhances the general "legislative discretion" in ratemaking relied upon by the Supreme Court in *Permian Basin. Nader v. FCC*, 520 F.2d 182, 203 (D.C. Cir 1975). We recognize that this view must be based on "permissible public interest goals" and otherwise be "reasonable", *FCC v. National Citizens Committee for Broadcasting*, 436 U.S. at 794, but we believe our decision to regulate dominant and nondominant carriers differently comes well within this standard. Our experience to date is replete with evidence that competition in the telecommunications industry is a relevant factor in weighing the public interest. *See, e.g., FCC v. RCA Communications, Inc.*, 346 U.S. 86 (1953); *Specialized Common Carrier Services*, 29 F.C.C. 2d 870 (1971), *recon.* 31 F.C.C. 2d 1106 (1971), *aff'd sub nom. Washington Utilities and Transportation Commission v. FCC*, 512 F.2d 1142 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975); *Bell Telephone Company of Pennsylvania v. FCC*, 503 F.2d 1250 (3d Cir. 1974), *cert. denied*, 411 U.S. 1026 (1975); *NARUC v. FCC*, 525 F.2d 630, 640, (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1977), *United States v. FCC*, No. 77-1249 (D.C. Cir. March 7, 1980). The new regulatory scheme adopted today will enhance competition by reducing the degree of unnecessary regulation imposed upon nondominant carriers. We believe this will allow them to respond to consumer demand by providing innovative services at the lowest reasonable prices as market needs can be discerned.[36] By maintaining our regulatory oversight of dominant carriers, we do not intend to hinder their accomplishment of these same goals, but only insure that they do not exploit their market power unlawfully.

34. Not only is our action permissible, but we believe that it would defy logic and contradict the evidence available to regulate in an identical manner carriers who differ greatly in terms of their economic resources and market strength.[37] The Commission has often taken this fundamental incongruity into account in fashioning its regulations and reaching its decisions.[38] Ten years ago, for example, this was our underlying premise in adopting rules requiring carriers to submit support material and economic data to justify their tariff filings:

> The information needed * * * will vary widely with, among other things, the nature of the rate filed, the size of the market it applies to, and the revenue it will generate. We do not expect that every rate filed by every carrier will require exactly the same amount of supporting information. It is not correct to state that every tariff filing must be supported by detailed cost projections and elaborate statistical studies. Large carriers filing rates for sizeable service offerings, would be expected to support their filing with the most comprehensive and reliable data that they can produce. For such carriers, statistical studies should be used wherever such studies can offer substantial improvements in study reliability. A point-to-point microwave carrier, on the other hand, with small revenues, only one service, and few customers would not be required, nor would it need, elaborate studies to support its rates.[39]

35. At least since the advent of competitive entry in the telecommunications market we have in fact recognized that the structure and market power of AT&T have required different regulatory treatment from that accorded firms not similarly situated. For example, in our *Domestic Satellite* decision, we restricted AT&T's initial use of domestic satellites to essentially non-competitive services so as to prevent AT&T's dominance and economic strength from defeating or weakening the incentive for competitive entry by satellite system entrepreneurs. 35 F.C.C. 2d at 848-52. In our *First Computer Inquiry*, 28 F.C.C. 2d 267 (1971), we exempted small carriers (those with revenues under $1,000,000) from the rules therein promulgated, and those rules were sustained on appeal. *GTE Service Corp. v. FCC*, 474 F.2d 724 (2d Cir. 1973) (affirming in relevant part). More recently, in our *Second Computer Inquiry*, decision, 77 F.C.C. 2d 384 (1980), we required only AT&T and GTE to form separate subsidiaries to offer enhanced services or customer premises equipment because of their nationally-based market power and ability to engage in anticompetitive behavior. On Reconsideration, we relieved GTE of this separate subsidiary requirement.

36. Moreover, we have also recognized in particular cases the principles underlying the treatment of non-dominant carriers adopted today. For example, in *American Satellite Corporation*, 55 F.C.C. 2d 1 (1975), a new competitive carrier was allowed to offer non-compensatory rates in recognition of its need to establish itself in the market and the fact that no monopoly ratepayer would be penalized by absorbing the firm's losses. Similarly, in *United States Transmission Systems*, 66 F.C.C. 2d 1091 (1977), a competitive carrier was allowed to offer bulk rate discounts since it did not provide monopoly-type service which could cross-subsidize competitive offerings; and in *Resale and Shared Use of Common Carrier Services*, 60 F.C.C. 2d 261 (1976), we did not require applicants reselling services obtained pursuant to tariff to show economic impact or special need for services not otherwise available because in these competitive markets such showings were recognized as superfluous.

37. Perhaps the most detailed instance of our adopting particularized rules applicable to AT&T is our Final Decision in Docket 18128.[40] There, in recognition of its ability to cross-subsidize rates for competitive services to the detriment of both competitive and monopoly service customers, we adopted a specific costing methodology applicable only to AT&T.

38. As was recognized by the court on review, "competition was central to the proceeding. A prime objective was to establish market rules for established and emerging carriers." *ARINC v. FCC*, slip op. at 15. The same principles

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[35] Section 4(i) empowers the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of the functions". *See also* Section 201(b) of the Act, which provides that "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act".

[36] As discussed in the *Notice* (paras. 51-54), marketplace forces should be sufficient to insure that the rates of competitive non-dominant carriers are reasonable and not unjustly discriminatory. Indeed, unregulated markets that are structurally sound do satisfy consumer demand at reasonable prices. *See, e.g.*, J. Quirk and R. Saposnik, *Introduction to General Equilibrium Theory and Welfare Economics* (1968).

[37] As we pointed out in the *Notice*, AT&T and the independent telephone companies dominate the industry, providing virtually all of the interstate and local telephone service and accounting for the bulk of private line and terminal equipment revenues. *See also Customer interconnection*, 61 F.C.C. 2d 766 (1976). *Second Report*, 75 F.C.C. 2d 506 (1980), for a detailed discussion of the structure of the telecommunications industry.

[38] The courts, too, have recognized that agencies are permitted to treat groups of carriers differently as long as the distinctions are reasonable. *American Airlines v. CAB*, 359 F.2d, 624 (D.C. Cir.), *cert. denied*, 385 U.S. 843 (1966).

[39] *Tariffs-Evidence*, 25 F.C.C. 2d 957, 965-66 (1970), *recon. denied*, 40 F.C.C. 2d 149 (1973). *See also* Section 61.38(f) of our Rules, 47 C.F.R. § 61.38(f), where we exempt certain smaller carriers from the tariff justification requirements. A recent opinion of the Court of Appeals for the D.C. Circuit noted that, even under the current Rules, these data may not be necessary if the tariff filings involved are not significant. *ARINC v. FCC*, slip op. at 26.

[40] *American Telephone & Telegraph Co.*, 61 F.C.C. 2d 587 (1976), 64 F.C.C. 2d 971 (1977), 65 F.C.C. 2d 64 (1977), 67 F.C.C. 2d 1441 (1978), *aff'd in relevant part sub nom. ARINC v. FCC*, No. 77-1333, (D.C. Cir. June 24, 1980) (pet. for rehearing pending).

upheld in *ARINC* underlie our decision here. We are exercising the power Congress delegated to us to resolve the problems confronting us as they actually exist in order to permit communications services to be produced efficiently and offered at the most reasonable prices possible.

39. Thus, the classification scheme we now establish is by no means a radical departure, as some assert; if anything, it merely codifies our practice of adjusting our regulation to the realities of this industry and the marketplace. Clearly, by adopting this scheme in the face of the record here, we effectuate our statutory responsibilities rather than abrogate them.

40. Nevertheless, AT&T challenges as legally deficient the Commission's dominant/non-dominant carrier approach to fulfilling its regulatory responsibilites. It argues, for example, that because Congress did not give us explicit statutory authority to classify carriers on the basis of their dominance in the marketplace, we are powerless to adopt the proposed regulatory scheme.[41]

41. We cannot accept the inflexibility implied by this interpretation of the Act. To do so would seriously hamper if not totally destroy our ability to accommodate the complex and dynamic developments in the field of communications. Indeed, this argument is simply contrary to the overwhelming weight of judicial opinion holding that Congress has granted this agency a "comprehensive mandate" with "not niggardly" but "expansive powers." *National Broadcasing Co. v. United States,* 319 U.S. at 219 (*See also* cases cited in paras. 29–30 *supra*).[42]

42. AT&T notes that while the enabling statutes of other agencies specifically contain general classification authority, the Communications Act provides only that the Commission may classify carriers for the keeping of accounts and records.[43] Thus, the argument runs, had Congress intended the Commission to classify carriers for purposes of rate and facilities regulation, it would have imposed the obligation or granted the authority explicitly. AT&T relies upon the maxim of statutory construction *expressio unius est exclusio alterius (ie.,* the expression of one thing is the exclusion of another) and language in *Alcoa Steamship Co. v. FMC,* 348 F.2d 746, 758 (D.C. Cir. 1965), as supporting this thesis. (Direct Comments of AT&T, pp. 37–38).

43. This reliance, however, is misplaced. As the D.C. Circuit has since observed:

> This maxim is increasingly considered unreliable * * * for it stands on the faulty premise that all possible alternatives or supplemental provisions were necessarily considered and rejected by the legislative draftsmen.

National Petroleum Refiners Association v. FTC, 482 F.2d 672, 676 (D.C. Cir. 1973), *cert. denied,* 415 U.S. 951 (1974).[44] To the extent that the maxim remains viable as a tool for statutory construction, it must be used with caution. *Morino Rios v. United States,* 256 F.2d 68 (1st Cir. 1958); *Massachusetts Trustees of Eastern Gas and Fuel Associates v. United States,* 312 F.2d 214, 220 (1st Cir. 1963). As the commentators have explained, "where an expanded interpretation [of the statute] will accomplish beneficial results [or] serve the purpose for which the statute was enacted, * * * the maxim will be disregarded and an expanded meaning [of the statute] given." 2A Sutherland Statutory Construction § 47.25. (Sands, 4th ed 1975).

44. Similarly AT&T's reference to *Alcoa Steamship* is inapposite. There, the Court was called upon to rule whether the Federal Maritime Commission had statutory authority to audit or inspect the foreign corporate records of U.S. flag carriers. The court held that the Commission did not have such authority, noting that Congress had intended fewer regulatory powers for the Commission than were possessed by other regulators of commerce. 348 F.2d at 758–760. However, unlike the situation confronting the *Alcoa* Court, our action here does not involve an attempt to significantly expand our authority over the companies we regulate. Rather, our classification scheme will enable us to reduce the intensity of our control over non-dominant carriers.[45]

45. Nor do we accept the contention espoused by AT&T that our proposed regulatory approach would, if adopted, be inconsistent with the statutory scheme of the Act. According to AT&T, Title II must be applied to all carriers in an evenhanded manner; our approach, it says, would unlawfully exempt non-dominant carriers from these requirements, particularly those of Sections 201–205.[46] AT&T's argument contains two points. The first, that we have no discretion as to how to regulate because the Act requires uniform application of Title II to all carriers, is simply wrong as a matter of law. *See* paras. 29–39, *supra.* This agency is thus authorized and obligated to exercise its reasoned judgment in devising the types of regulatory systems most appropriate to the problems presented within its jurisdiction. We have already discussed the principles on which we have based the adoption of this regulatory system. We are confident that not only is it a reasonable system but also that continuation of the prior undifferentiated system of rules will disserve the public and thus be unreasonable.

46. The second implication in AT&T's argument—that the modification of our rules constitutes an "exemption" of these firms from Title II—overstates the breadth of the action adopted here. Even accepting *arguendo* AT&T's arguments as to the question of "exemption", our action today does not relieve non-dominant carriers from complying with the provisions of Sections 201–205 of the Act, or the Commission from making the required findings under Section 214. It merely modifies the method by which the Commission assures compliance with these requirements.

47. For similar reasons we reject the claim of AT&T and USITA that our action here is precluded by the Supreme Court's decision in *FPC v. Texaco.* That decision, they say, establishes the doctrine that an administrative agency charged with regulating just and

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[41] Direct Comments of AT&T, p. 37; *See also* Reply Comments of USITA, p. 5.

[42] *Accord Niagara Mohawk Power Corp. v. FPC,* 379 F.2d at 158. ["(T)he Act is not to be given such tight reading wherein every action * * * is justified only if referable to express statutory authorization. On the contrary, the Act is one that entrusts a broad subject matter to administration by the Commission * * * in light of new and evolving problems and doctrines."]

[43] Section 220(h), 47 U.S.C. § 220(h), provides that:

> The Commission may classify carriers subject to this Act and prescribe different requirements under this section for different classes of carriers, and may, if it deems such action consistent with the public interest, except the carriers of any particular class or classes in any State from any of the requirements under this section in cases where such carriers are subject to State commission regulation with respect to matters to which this section relates.

As SBS observes, however, this section is essentially a jurisdictional provision of regulatory power. It cannot be used to reveal a congressional intent to deny the Commission the power to develop a differential regulatory approach for carriers wholly under federal jurisdiction. Reply Comments of SBS, pp. 26–27.

[44] *See also SEC v. Joiner Leasing Corp.,* 320 U.S. 344, 350–51 (1943); *American Trucking Association v. United States,* 344 U.S. 298, 300–310 (1953); and *Durnin v. Allentown Federal Savings and Loan Ass'n.* 218 F. Supp. 716, 719 (E.D. Pa. 1963).

[45] We also find no merit in AT&T's contention that the current legislative proposals before Congress regarding carrier classifications demonstrate that we now lack the power to classify carriers on the basis of their market dominance. (Direct comments of AT&T, p. 39). *See United States v. Southwestern Cable Co.,* 392 U.S. 157, 169–70 (1968); *Wong Yan Sung v. McGrath,* 339 U.S. 33, 48 (1950); *Haynes v. United States,* 390 U.S. 85, 87 (1968); *United States v. Price,* 361 U.S. 304, 313 (1959).

[46] Direct Comments of AT&T, pp. 36; 42–46; *See also* Direct Comments of USITA, p. 9.

reasonable rates cannot defer regulation to the forces of the marketplace.[47]

48. Admittedly, our decision hinges to some degree upon our conclusion that marketplace forces will operate to ensure that the rates and other tariff provisions of non-dominant carriers comply with the objectives of Sections 201 and 202 of the Act. Nevertheless, we are confident that our movement toward less direct, permissive forms of regulation where competitive conditions exist does not run afoul of the Court's holding in *Texaco*. Indeed, the new regulatory policies we adopt here simply cannot be compared to the FPC action prohibited by *Texaco*. If anything, our action is totally consistent with the *Texaco* decision since the Court expressly affirmed the FPC's wide discretion to fashion suitable procedures to ensure just and reasonable rates. 417 U.S. at 387–393. Moreover, in a recent opinion interpreting that decision the Supreme Court explained:

> Our concern in *Texaco* was that rates of small producers might be totally exempted from the Act, and we did not indicate that producer or pipeline rates would be *per se* unjust and unreasonable because related to the unregulated price of natural gas. *Texaco* did not purport to circumscribe so severely the Commission's discretion to decide what formulas and methods it will employ to ensure just and reasonable rates. Indeed, the decision underscored the wide discretion vested in the Commission. (Citation omitted.) [48]

49. The *Texaco* decision struck down an FPC order because the Court found that the agency had essentially abdicated its statutory resonsiblity to assure that small-producer rates were just and reasonable. *Id.* at 394. The Court read the underlying order to indicate that the FPC assumed that whatever price prevailed in the market would also be a just and reasonable rate under the statute, independant of cost or other ratemaking factors. *Id.* at 397. The Court relied heavily upon the legislative history of the Natural Gas Act which showed Congress believed the market at issue there to be "heavily concentrated and that monopolistic forces were distorting the market price for natural gas." *Id.* at 397–398, 400.

50. Moreover, unlike what appears to have been the case in *Texaco*, we have not abdicated all means of review or control over non-dominant carriers' rates. We merely intend to treat them as "presumptively lawful". That presumption in turn may be rebutted under the standards specified, *infra*. Further, parties may always file a complaint under Section 208 of the Act. Our policy of permitting resale of communications facilities will result in "unreasonable discriminations" in rate level or structure being eliminated by carriers in response to the arbitrage performed on them by resellers. *AT&T v. FCC*, 572 F.2d at 23. Our open entry policies, eased by the modifications of Part 63 of our rules adopted today, should also result in competitive firms being able to enter to compete with firms charging prices not related to the costs of providing the service.

51. The case of non-dominant communications firms is distinguishable on several grounds. Among those particularly relevant to AT&T's arguments here is that at least since our decision in the *Private Line Case*, 34 F.C.C. 217 (1963), *recon.*, 34 F.C.C. 1094 (1963), *aff'd sub nom. Wilson & Co. v. United States*, 335 F.2d 788 (7th Cir. 1964), *remanded*, 382 U.S. 434 (1966), we have consistently enunciated a policy which employs costs as the touchstone for determining the justness and reasonableness of rates. Our analysis of the structure and market position of what we have called non-dominant carriers allows us to be assured that, unlike the market considered by Congress in adopting the Natural Gas Act, these firms do not possess the market power necessary to sustain rates which are below, or above, costs. Thus, we can predict with confidence that the rates charged by non-dominant carriers will be "just and reasonable" within the meaning of the Communications Act whether we require tariff support material or not.

52. In any event, we intend to monitor the tariff filings as well as the service additions and suspensions of non-dominant carriers during the transition from a highly regulated to a more freely competitive industry in order to prevent any anticompetitive behavior. However, based on our experience thus far with the emerging competitive telecommunications market, we believe the potential for such abuse to be slight and the risk more than outweighed by the benefit to overall consumer welfare.

53. In sum, we conclude that our adoption of a dominant/non-dominant carrier classification scheme and the concomitant application of different regulatory rules by class of carrier comes well within our broad discretion and authority under the Act. We furthermore affirm our tentative conclusion that our scheme properly reflects the public interest.

IV. Definition of Dominance; Classification of Carriers

A. Introduction and Summary

54. Our goal throughout this rulemaking proceeding has been to establish a set of criteria to enable us to determine whether there are certain firms which could not rationally engage in the activities proscribed by the operative provisions of Title II of the Communications Act, *viz.* Sections 201–205 and 214. For convenience, we have referred to such firms as non-dominant. We have found that application of our current regulatory procedures to non-dominant carriers imposes unnecessary and counterproductive regulatory constraints upon a marketplace that can satisfy consumer demand efficiently without government intervention. In this section we develop a test to classify carriers as either dominant or non-dominant. We start by defining dominant carriers as carriers that have market power (*i.e.*, power to control price). Non-dominant firms, therefore, are those which do not possess power over price. Our analysis leads us to conclude that the specialized common carriers (also referred to as terrestrial microwave carriers) and the resale carriers (excluding the resellers of satellite transmission facilities) are not dominant. [49] Therefore we revise our tariff and Section 214 procedures for these carriers.

B. Definition of Dominance

55. In the *Notice*, we proposed a definition of dominance that we felt would enable us to identify carriers that are subject to sufficient competitive pressure so that their performance is, and can be presumed to continue to be, in the public interest, without detailed governmental oversight and intervention. That definition of dominance was one of market power. We reasoned, based upon the well-established teachings of modern welfare economics, that a firm without market power does not have the ability or incentive to price its services unreasonably, to discriminate among customers unjustly, to terminate or reduce service unreasonably or to overbuild its facilities. The comments on these findings generally have been supportive and have acted to strengthen our tentative beliefs. [50]

56. Consistent with the *Notice*, we define a dominant carrier as a carrier

[47] Direct Comments of AT&T, pp. 50–54; Reply Comments of USITA, p. 3.

[48] *FERC v. Pennzoil Producing Co.*, 439 U.S. 508, 516 (1979). *See also Permian Basin Area Rate Cases*, 390 U.S. 747 (1968); *Wisconsin v. FPC* 373 U.S. 294 (1963).

[49] As indicated we are also revising our Part 63 requirements to relieve domestic satellite carriers of the present requirement to obtain Section 214 authorization before activating each satellite transponder.

[50] *See, e.g.*, the *Comments* of COWPS and NTIA.

that possesses market power. Market power refers to the control a firm can exercise in setting the price of its output.[51] A firm with market power is able to engage in conduct that may be anticompetitive or otherwise inconsistent with the public interest. This may entail setting price above competitive costs in order to earn supranormal profits, or setting price below competitive costs to forestall entry by new competitors or to eliminate existing competitors. In contrast, a competitive firm, lacking market power, must take the market price as given, because if it raises price it will face an unacceptable loss of business, and if it lowers price it will face unrecoverable monetary losses in an attempt to supply the market demand at that price.

57. We have focused on certain clearly identifiable market features in order to determine whether a firm can exercise market power. Among these are the number and size distribution of competing firms, the nature of barriers to entry, and the availability of reasonably substitutable services. The presence of certain features, such as barriers to entry, may allow a firm to exercise market power.

58. An important structural characteristic of the marketplace that confers market power upon a firm is the control of bottleneck facilities.[52] A firm controlling bottleneck facilities has the ability to impede access of its competitors to those facilities. We must be in a position to contend with this type of potential abuse. We treat control of bottleneck facilities as prima facie evidence of market power requiring detailed regulatory scrutiny.

59. Control of bottleneck facilities is present when a firm or group of firms has sufficient command over some essential commodity or facility in its industry or trade to be able to impede new entrants.[53] Thus bottleneck control describes the structural characteristic of a market that new entrants must either be allowed to share the bottleneck facility or fail.[54]

C. Classification of Carriers

60. In this part we analyze the telecommunications industry to determine the carriers that have market power. While we must identify, for regulatory purposes, whether carriers are dominant or non-dominant, it is performance of the marketplace in satisfying consumer demand that is our overriding concern and not the performance of individual carriers *per se*.[55] Thus our classification of carriers or their individual service offerings is not designed to help or hinder any one particular firm or industry, but rather is designed to enable consumers to derive the best attainable service from each component of the telecommunications industry, given the state of technology as we know it today.[56]

61. Our analysis, for purposes of exposition, is segmented into the following categories: telephone companies, Western Union, domestic satellite carriers (Domsats), miscellaneous common carriers (MCCs, also referred to as video terrestrial microwave carriers), specialized common carriers (SCCs, also terrestrial microwave carriers) and resale and value added carriers.

1. *Telephone Companies*

62. AT&T, including its 23 associated telephone companies and its Long Lines Department, dominates the telephone market by any method of classification. Currently, the Bell System controls access to over 80% of the nation's telephones. Since many of AT&T's competitors must have access to this network if they are to succeed, AT&T possesses control of bottleneck facilities. Therefore, we believe that AT&T must be treated as dominant.

63. It is also clear that AT&T has market power in long distance telephone service given its overwhelming share of the MTS and WATS market. The growing demand for long distance telephone service and the current difficulties of entering this market on a large scale with alternative distribution facilities confer substantial market power upon AT&T. Thus, AT&T's long-run profit maximizing behavior, in the absence of regulation, may be to increase price above cost for long distance service. Given this very real possibility, we will continue to apply the full panoply of our traditional regulations to AT&T's long distance telephone service.

64. AT&T also possesses significant market power in the private line service market. For example, from a statistical perspective, AT&T's revenues for private line services in 1978 amounted to over $2 billion, while the revenues of the specialized common carriers were about $153 million.[57] Although a precise determination of AT&T's market share in private line is not possible AT&T is dominant in virtually every private line service market where other common carriers also compete.[58] Further, we have repeatedly found AT&T's prices for private line services unlawful in terms of the cost standards established by the Commission.[59] Given these conditions, we believe it would be imprudent for us to propose relaxation of our regulation of AT&T's private line service offerings at this time. Therefore, we will continue

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[51] *See, e.g.*, F. M. Scherer, *Industrial Market Structure and Economic Performance* (2nd Ed. 1980).

[52] Such control has received extensive review by the courts. *See United States* v. *Terminal Railroad Ass'n of St. Louis*, 224 U.S. 383 (1912); *Eastman Kodak* v. *Southern Photo Materials Co.*, 273 U.S. 359 (1927); *Associated Press* v. *United States*, 326 U.S. 1 (1945); *United States* v. *Klearflax Linen Looms, Inc.*, 63 F. Supp. 32 (D. Minn. 1945); *United States* v. *Lorain Journal Co.*, 342 U.S. 143 (1951); *Gamco* v. *Providence Fruit and Produce Building*, 194 F. 2d 484 (1st Cir.), *cert. denied*, 344 U.S. 817 (1952); *Times Picayune Co.* v. *United States*, 345 U.S. 594 (1953); *Otter Tail Power Co.* v. *United States*, 410 U.S. 366 (1973); *Mt. Hood Stages* v. *Greyhound Corp.*, 555 F. 2d 687 (9th Cir. 1977), *vacated on other grounds*, 437 U.S. 322 (1978).

[53] *See, e.g.*, A. D. Neale, *The Antitrust laws of the United States of America: A Study of Competition Enforced By Law* (1968).

[54] For a discussion of the nature of institutional as well as physical and economic barriers to entry see Nancy S. Barrett, *The Theory of Microeconomic Policy* (1974).

[55] Consistent with the Notice, we generally treat carriers as single output firms in this order. We do not address the competitive service offerings of dominant firms, nor the manner in which these offerings should be regulated. A finding of dominance in this order for a particular firm entails a continuation of our present regulatory treatment of all of the activities of that firm. Similarly, carriers are eligible for streamlined regulatory procedures only if they are not dominant in the provision of any services. We recognize this is a conservative approach to regulation and we plan to deal with the much more complex issue of the regulation of multi-output carriers in a further notice of proposed rulemaking. In short, our focus should shift from carrier specific to market specific analysis in order to conform more closely to the dynamics of the marketplace. *See Second Computer Inquiry*, 77 F.C.C. 2d 384 (1980).

[56] AT&T complains that our regulatory scheme would disadvantage dominant firms since they would be unable to respond as quickly as non-dominant firms to the demands in the marketplace. (Direct Comments, p. 34). Our duty under the Act is to further the public's ability to obtain "rapid efficient * * * communications service * * * at reasonable prices" and we have determined, based on this record and our experience with competition, that relaxing regulation in some instances will better enable us to fulfill this responsibility. We have found, however, that relaxed regulation for such dominant firms as AT&T would not be in the public interest. In this regard, however, we have begun other efforts which may afford AT&T greater pricing flexibility while maintaining sufficient administrative oversight of such activities. *See* Cost Allocation Manual, CC Docket No. 79-245 (released June 26, 1980).

[57] *See Customer Interconnection, Second Report* 75 F.C.C. 2d 605 (1980). A complete reading of this *Report* and its predecessor is helpful in understanding AT&T's dominance in the telecommunications industry.

[58] *See AT&T Private Line Rate Structure and Volume Discount Practices*, 74 F.C.C. 2d 1 (1979).

[59] *See Multi-Schedule Private Line Service*, 65 F.C.C. 2d 295 (1977); *Telpak*, 61 F.C.C. 2d 587 (1976), *recon.*, 64 F.C.C. 2d 971 (1977); *Dataphone Digital Service*, 62 F.C.C. 2d 778 (1977), *recon. denied*, 64 F.C.C. 2d 994 (1977), *pet. for review dismissed sub nom. AT&T v. F.C.C.* NO. 77-1742, (D.C. Cir. May 21, 1979); *Facilities for Other Common Carriers*, 74 F.C.C. 2d 226 (1979); and *Series 7000*, 67 F.C.C. 2d 1134 (1978), *recon. denied*, 70 F.C.C. 2d 2031 (1979), *aff'd sub nom. ABC v. FCC*, No. 79-1201 (D.C. Cir. October 9, 1980).

to treat all of AT&T's basic transmission offerings as dominant.[60]

65. The independent telephone industry consists of approximately 1500 carriers that offer both local and interstate services. As franchise holders in exchange areas these carriers possess control of essential facilities. Competitors in the voice or message market must have access to the local exchange facilities owned by the independent telephone companies. The independent carriers also offer interstate services essentially on a non-competitive, cooperative basis with Bell, generally agreeing to Bell tariffs. The profits of these carriers are determined to a large degree by the settlements and separations process. These arrangements have the effect of tying all telephone companies together in a joint venture providing basic service. Thus, all of these carriers share in AT&T's market power. As a result of these factors the independent telephone companies are dominant and will continue to be treated, for regulatory purposes, in the same manner that they are currently treated.[61]

2. Western Union

66. In the *Notice* we proposed to classify Western Union (WU) as a dominant carrier because of its virtual *de facto* monopoly of Telex/TWX service. Telex and TWX were the only significant domestic switched networks dedicated to teletypewriter, that is, written record service on an exchange basis. We noted, however, that proceedings to be resolved following the *Notice's* release could result in market alterations which might temper WU's ability to exercise market power. WU was invited to rebut our finding as to its classification.

67. In its direct comments WU urged that Telex/TWX are part of a broader business communications market, of which these services account for an insignificant share. Were we to accept WU's market definition we could also accept its conclusion as to its lack of a dominant position. We concur in the selection of the market definition standard which calls for reasonable interchangeability among products as to price, quality and use. *United States* v. *E. I. DuPont de Nemours & Co.*, 351 U.S 377 (1956). We find, on this basis, that WU's selection of a business communications market as the relevant market is too broad and seemingly ignores all but the roughest gradation of interchangeability.

68. In an appendix to its comments, WU submitted a report by the Diebold Group, Inc., which compared eleven services as to their substitutability with Telex/TWX service. MTS and WATS service were found moderately substitutable, although they do not include hard copy. Mailgram, the proposed U.S.P.S. ECOM service, and first class mail also were found moderately substitutable even though they require a minimum of one day to deliver. Communicating word processors and time sharing terminals were found moderately substitutable, although not available to many users. Private intercompany mail service and telegram service were found poor alternatives to Telex/TWX, due primarily to lack of broad availability and cost, respectively.

69. The only services found by the Diebold Group study to be "very" substitutable were "High Speed Fax" and "Slow Fax". These services are found comparable to Telex/TWX in terms of price, quality and delivery time. Furthermore they are available to the small user. Nevertheless, facsimile service offered to customers using leased lines by Graphnet and potentially by other firms is at an incipient stage of development.

70. While some have predicted that the facsimile market will grow rapidly, we have seen little evidence in this record or in our own analyses to show that WU's position in the domestic switched record market has declined to the extent that it can be said that customers now have "reasonable substitutes" readily available. Moreover, WU now serves between 100,000 and 150,000 customers interconnected with its network. We note that the telecommunications market places a value on switched service networks being capable of serving a large universe of addresses. WU's Telex/TWX network, extensive as it currently is, obviously gives it a substantial advantage over potential competitors. We believe the lack of direct substitutes for Telex/TWX confers market power on WU.

71. WU claims that any market power it currently possesses will be virtually eliminated by future market entrants.[62] Thus, it is argued, that the potential of new entities entering the market is sufficient to deter supracompetitive pricing. The Supreme Court has found that "[P]otential competition, insofar as the threat survives * * * may compensate in part for the imperfection characteristic of actual competition in the great majority of competitive markets". *United States* v. *Penn-Olin Co.*, 378 U.S. 158, 174 (1964), *quoting* Wilcox, Competition and Monopoly in American Industry, TNEC Monograph No. 21, 7–8 (1940). While we agree that the future is likely to see major changes in the relevant markets in which WU now operates, for the reasons explained above, we do not believe that the substitutes available in the marketplace are as yet having a sufficient restraining effect on WU's pricing and marketing conduct to justify a finding of non-dominance at this time.[63]

72. We note, however, that between the issuance of the *Notice* and this order we have taken several actions which we expect may have the result of diminishing Western Union's market power. In *Public Message Services*, 71 F.C.C. 2d 471 (1979), *recon. denied*, 73 F.C.C. 2d 151 (1979), we interpreted the Communications Act as not limiting the provision of public message services to Western Union. In our *"Gateways"* order we found that the public interest would be served by authorizing the international record carriers to interconnect with their domestic affiliates and to extend their services directly to customers in additional U.S. cities, thereby substantially reducing the IRCs' need to employ the services of domestic carriers for acceptance and delivery of international traffic.[64] These decisions reduce some of the impediments to entry, and firms already are beginning to test the market for profit opportunities. As the record market continues to evolve, we recognize that Western Union may lose the market power it currently possesses.

3. Domestic Satellite Carriers

73. In our *Notice* we proposed to revise our regulatory procedures for the domestic satellite carriers (Domsats) because of the competitive nature of their service offerings.[64a] However,

[60] It should be noted that any enhanced service that AT&T offers must be supplied by a separate subsidiary and will not, of course, be regulated as a common carrier communications service under Title II. *See Second Computer Inquiry*, 77 F.C.C. 2d 384 (1980).

[61] We recognize that certain independent telephone companies may seek to enter either service or geographic markets in which they currently do not participate. We do not decide here whether or under what conditions such an entrant might be considered non-dominant.

[62] *See also* Direct Comments of NTIA

[63] *See Telex TWX Investigation*, 67 F.C.C. 2d 1429 (1978).

[64] *International Record Carriers (Gateways)*, 76 F.C.C. 2d 115 (1980).

[64a] We perform a carrier specific analysis of the Domsats here to be consistent with the Notice in this proceeding. We now recognize, however, that it may be more appropriate to analyze the services that the Domsats provide within the broader context of the market in which they compete and to factor into the analysis the multi-output nature of the carriers providing domestic satellite service. We plan to employ such an analysis in a further notice of proposed rulemaking. *See also* note 55, *supra*.

since that time, the demand for transponder space has grown to exceed the supply. There is little or no transponder space currently available to the public. Under such conditions, unregulated firms would have the ability to increase price above cost to allocate transponder space.

74. We have found the appropriate scope of regulation for the Domsats in this proceeding to be particularly elusive. For example, the industry structure is complex. Satellites often are used by firms as part of composite systems using many different transmission methods as in the case of AT&T and GTE. Additionally, satellites can be used to provide either message, video or data traffic on a sole source basis. There also are varying degrees of vertical integration in the industry, with some firms owning the space segment, up-link and receive-only Earth stations, and several others owning various other combinations. The number of permutations from combining all of the above possibilities is great.

75. While it is clear that space segment providers possess market power, it is not clear that consumers are better off with rate regulation of the Domsats. If prices for transponder space are constrained, the market power is transferred to Domsat resale carriers. If, in turn, the prices of the resale carriers are constrained by regulation, it is likely that the windfall rents will be reaped by firms, such as cable systems and program suppliers, rather than the general populace. Under such conditions, the benefits of regulation are questionable. As a matter of policy and law, the question devolves to the meaning of "just and reasonable" under Section 201(b) of the Act, 47 U.S.C. § 201(b). We recognize that this agency traditionally has interpreted just and reasonable as cost-based. However the dilemma posed by the Domsats may require a reinterpretation of our general philosophies. We intend to consider this complex issue in the near future.[65]

[65] Although we have dedicated a great deal of our resources in the past two decades to establishing a cost based system of rates, *see, e.g., American Telephone & Telegraph Co.*, 61 F.C.C. 2d 587 (1976), 64 F.C.C. 2d 971 (1977), 65 F.C.C. 2d 64 (1977), 67 F.C.C. 2d 1441 (1978), *aff'd in relevant part sub nom. ARINC* v. *FCC*, No. 77-1333, (D.C. Cir. June 24, 1980) (pet. for rehearing pending), we have done so because we recognized that the industry affected was becoming more competitive. We have been most concerned with adherence to this system with respect to the rates of the dominant interstate firm, AT&T. With respect to other firms, however, it may be reasonable because of long term consequences not to adhere inflexibly to the cost-based standard but "to make the pragmatic adjustments called for by particular circumstances". *Permian Basin Area Rate Cases*, 390 U.S. at 777, quoting *FPC* v. *Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942).

76. For present regulatory purposes we must classify the Domsats under the test developed here. Since there is a cost advantage to satellite transmission, pricing at the market price established by the landhaul carriers, primarily AT&T, will confer economic rents upon the Domsats. In order for the supply of Domsat facilities to be competitive, there must be ample opportunity for additional entry. Yet there currently is a technical limit on the number of satellites that will be operating in the near term. The Domsats therefore are in a position to allocate their limited number of transponders among a larger number of customers by raising price until the number of customers demanding transponders equals the available supply of transponders. Thus the Domsats possess market power and, we believe, must be classified as dominant.[65a]

4. *Miscellaneous Common Carriers*

77. The miscellaneous common carriers relay video signals and their corresponding audio components by terrestrial microwave links. The MCCs provide service throughout the nation, often on remote routes in Western states not served by other video interconnection methods.[66] While the MCCs compete generally with the Domsats in the provision of video interconnection service, currently the Domsats do not relay the signals of the major networks. In remote areas without good over-the-air reception, the demand for network signals is intense.[67] Thus, the MCCs have the power to raise price over cost in some instances. We believe this power is limited because of potential competition from Cable Television Relay Stations (CARS). Nevertheless, there is no readily available alternative to the network service provided by the MCCs in some areas, and a CARS system normally will take some time to be ordered, constructed and begin operation, even if there are no complications in the application process, equipment purchasing and station construction.

78. Although we proposed to treat carriers that distribute network signals differently, several parties have stated this would create "serious confusion and inconsistencies." [68] It appears that any differentiation among the MCCs for regulatory purposes may create administrative and economic inefficiencies, such as distorting the choice of programming distributed by the MCCs. Thus, we classify all of the MCCs as dominant and will continue in force our regulatory procedures for the MCCs established in *American Television Relay, Inc., supra* 63 F.C.C. 2d 911 (1977), *recon. denied*, 65 F.C.C 2d 792 (1977). Here again we recognize that our approach is a conservative one. Given the fact that terrestrial video interconnection is a technology that has been, and will continue to be, faced with declining demand, we will revisit our regulations of the MCC's in the near future to determine whether they can be designed to promote more efficient service to the public, while satisfying the just and reasonable standard of the Act.

5. *Specialized Common Carriers*

79. The specialized common carriers (SCCs) provide terrestrial voice and data services in direct competition with the established telephone carriers.[69] In 1979 the SCCs owned approximately 30,000 voice-grade circuits in the top 100 markets.[70] By comparison AT&T alone owned 2.3 million individual interexchange circuits and more than 80 million exchange loops.[71] As a result, the SCCs always face a direct competitor that offers a readily substitutable service. And, because AT&T's rates constitute an unbrella price the rates charged by SCCs are clearly constrained.[72] Indeed, any attempt to

[65a] Carriers providing earth station facilities for transmit or receive service only will be classified as non-dominant. These firms do not provide the space segment but merely offer their customers the means to utilize the transponder space which the customers have already obtained. Thus, the market power of a Domsat or Domsat resale carrier is not transferred to these firms. Examples of such carriers include: American Television and Communications Corp; Channels of Blessings; Colony Satellite Services, Inc.; CPI Satellite Telecommunications, Inc; Greater Starlink Corp., Pappas Satellite, Satelink, Inc., Satellite Networks, Inc., Satellite Services, Inc., Satellite Signals Unlimited, Inc., Satellite Transmission and Receiving Co., So. Florida Cable Television Corp., Western Satellite Corp., and Wold Communications, Inc.

[66] For a graphic depiction of the coverage provided by the MCCs, *see Television Factbook* (1979).

[67] *See, e.g.*, R. G. Noll, M. J. Peck and J. J. McGowan, *Economic Aspects of Television Regulation* (1973).

[68] *Direct Comments* of ABC, CBS, and NBC, p. 4 *See also* the Direct Comments submitted by Gordon and Healy for various MCCs.

[69] We consider the following carriers to be SCC's for purposes of this rulemaking: MCI Telecommunications Corporation, Southern Pacific Communications Company, United States Transmissions Systems, Inc., Goeken Communications, Inc. and Western Telecommunications, Inc.

[70] Direct Comments of AT&T, p. 28.

[71] Comments of AT&T in Docket 79-245, at III-2 (December 4, 1979).

[72] Although is is theoretically possible for a specialized common carrier to possess a cost advantage over both AT&T and its other rivals and thus be able to reap a supranormal return on its investment, we do not have any evidence to this effect. Moreover, because of the higher risk faced by the SCCs and the need for dynamic efficiency in the

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price above AT&T's rates will be frustrated by an immediate loss of service.

80. We also emphasize that an SCC could not rationally price above its costs since entry barriers are sufficiently low. An SCC setting its rates too high would encourage other firms to enter the market, offer the same or improved product at a more reasonable price, and capture a share of the market.

81. By the same token, there is no potential harm to consumers from SCCs pricing their services below cost since they do not possess the ability to drive AT&T out of the market.[73] Nor do they have the ability to recoup the losses from a predatory campaign since, as indicated, they cannot set prices above cost. Thus, the likelihood of a predatory pricing campaign by a SCC ending up with the predator as monopolists is virtually non-existent. Therefore, we conclude that the SCCs are not dominant.

6. *Resale Carriers*

82. Resale carriers lease circuits from underlying carriers and use them to provide service to their customers.[74] These carriers essentially act to enforce good industry performance. If a particular service is not being provided adequately to consumers, these carriers often act to fill the void. The resale carriers also have the potential to undermine price discrimination schemes by the existing dominant carriers by engaging in arbitrage. Given the low barriers to entry into these operations, resale carriers appear to be more subject to actual and potential competition than any other telecommunications industry. As a result of the multitude of actually and potentially substitutable services available, they have no power to raise prices above the rates charged by the underlying carrier plus an allowance for the cost of their operation (even if it is cost efficient). Such an overpriced service could not be sold in this competitive market. Thus we conclude the resale carriers are non-dominant.

83. We exclude satellite resale carriers from the above discussion because there currently is a limited number of transponder spaces available which, in turn, limits the number of competing resale carriers. Moreover, because the Domsats are unable, under a system of rate regulation, to capture the rents from the shortage of transponder space, this market power can be utilized by Domsat resellers. Thus, we conclude the resale carriers of satellite facilities are dominant.[75]

D. Conclusion

84. We have defined dominant carriers as those having market power, *i.e.*, power to ot control price. We have analyzed each of the components of the telecommunications industry and have concluded that the telephone companies, Western Union, the Domsats, Domsat resale carriers and the MCCs are dominant and will continue to be regulated as they are today. Specialized common carriers and resale carriers will be considered non-dominant, and as such are eligible for our revised regulatory procedures.[76]

V. The New Rules for Non-Dominant Carriers

A. Introduction

85. The streamlined procedures we now adopt for non-dominant carriers are intended to enable them to respond to the demands of the competitive marketplace with a minimum of regulatory interference. These carriers will be afforded the flexibility to experiment with price/service offerings without the burden and delay of attempting to compile and produce substantial economic supporting data well in advance of when they will be permitted to market the service. They will now also be authorized to enter new markets quickly where they perceive competitive opportunities exist, or leave others on relatively short notice if their projections are not realized.

86. We have not relieved these carriers from all of our regulatory policies which we believe may constrain their ability to compete effectively in the marketplace. Rather, our new regulatory approach has been designed to balance our duty to refrain from imposing unnecessary regulatory burdens upon these carriers. *Home Box Office v. FCC*, 567 F.2d 209 (D.C. Cir.), *cert denied*, 434 U.S. 829 (1977), *Geller v. FCC*, 610 F.2d 973 (D.C. Cir. 1979), with our recognition that additional "deregulatory" actions are both more far reaching in their implications and based on less familiar analyses.

87. We fully appreciate that further action may be warranted. Indeed, some commenters argue that our proposals go too far while others believe that they do not go far enough. We, of course, will monitor the impact of our new rules and modify them where necessary. But, nearly a decade of experience with competitive entry convinces us that this regime can be adopted safely now, and will go a long way toward promoting competition and related consumer benefits. A detailed discussion of these rules and the changes we have made to them after careful analysis of the comments is set forth below.

B. Presumption of Lawfulness

88. The economic underpinning of our proposal to streamline the regulatory procedures for non-dominant carriers flows from the fact that firms lacking market power simply cannot rationally price their services in ways which, or impose terms and conditions which, would contravene Sections 201(b) and 202(a) of the Act. For reasons we have discussed in detail in the *Notice* (paras. 46–49) a non-dominant competitive firm, for example, will be incapable of violating the just and reasonable standard of 201(b). If it charges unreasonably high rates or imposes unreasonable terms or conditions in conjunction with the offering, it would lose its market share as its customers sought out competitors whose prices and terms are more reasonable. As also explained, it is equally unlikely that a competitive firm would engage in a strategy of below-cost or predatory pricing in an attempt to drive rivals out of the market. This is especially true where it faces a dominant firm, such as AT&T, as an actual or potential rival and barriers to the entry of new firms are lowered.

89. Similarly, a non-dominant firm cannot rationally engage in the type of unlawful discrimination condemned by

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SCC market to satisfy consumer demand, we believe the public will be served best if an efficient SCC is rewarded by the marketplace rather than burdened by the government with counterproductive regulation. We note that given the structural characteristics of the market such as low entry barriers no one SCC should be able to gain an advantage that would lead to consumers being disadvantaged.

[73] For example, the net communications plant for all of the SCCs in 1979 was less than $300 million. AT&T had a net investment of over $26 billion in interstate operations alone in 1979.

[74] At the time the *Notice* was released there were seven resale carriers, not including satellite resale carriers. *See Notice* n. 18. Since then eleven additional resale carriers have filed tariffs. They are: DAG, Inc., Hyatt Corporation, Leased Data Services, Inc., National Communications Corporation, Pacific Network Communications Company, TransNational Network, Inc., United Network Service, Inc., United States Telephone Communications, Inc., Telshare, Teltec Savings Communications Company, and Vector Communications, Inc.

[75] Examples of such dominant Domsat resellers include: American Satellite Corp., ASN, Inc., Satellite Communications Systems, Inc., Southern Satellite Systems, Inc., United Video, Inc., Eastern Microwave, Inc., and Transponder Corporation of Denver.

[76] In our decision in *Second Computer Inquiry*, 77 F.C.C. 2d 384 (1980), we found that enhanced services were not common carrier communications services within the meaning of the Act and are not regulable under Title II. As a result, these procedures apply only to carriers providing basic service.

Section 202(a) of the Act.[77] (*Notice* paras. 51–54). As discussed in the *Notice*, price (or term) differentials, when offered by carriers lacking price control, are indicative of competition—not of wealth-transferring price discrimination schemes. We, therefore, tentatively concluded in the *Notice* that the rates and other terms of the tariffs filed by non-dominant carriers could be considered presumptively lawful, and significantly, most of the commenting parties agree.

90. AT&T, however, disputes our view that non-dominant carriers would be precluded from engaging in unlawful price discrimination and in fact claims that they have every incentive to do so.[78] For support AT&T cites an article by R.D. Willig, at the time a Bell Laboratories economist, in the Spring 1978 volume of *The Bell Journal of Economics* entitled "Pareto-superior Nonlinear Outlay Schedules." That article attempts to prove that public utilities in particular will benefit themselves and all consumers by arranging prices a long a nonlinear outlay schedule that offers the largest consumer a marginal price equal to marginal cost with everyone else paying a price which exceeds marginal cost by various degrees. The implication is that as a matter of public policy, society would be bettered by giving large firms price discounts from average cost rates.

91. Beyond the merits of such a policy itself, the analysis assumes, among other things, that the utility's production function is characterized by economies of scale, and that its product cannot be readily traded among individual consumers (*i.e.*, cannot be resold). Both of these assumptions are highly debatable. In particular, AT&T itself now favors a policy of resale and shared use of its services under certain circumstances.[79] The fact that carriers imposed restrictions in the past to prevent resale of various services is, we believe, significant evidence of the resalability of telecommunications services.

92. Substantive criticism of the Willig article is provided in the Spring 1980 volume of *The Bell Journal of Economics* by J. A. Ordover and J. C. Panzar in "On the Nonexistence of Pareto-superior Outlay Schedules". The authors, one of whom also is a Bell Laboratories economist, point out that users of utility services often compete in final product markets, thus nullifying the assumption that user demands are independent. They conclude that a uniform price above marginal cost (*e.g.*, equal to average cost) may be Pareto efficient, given available policy instruments.[80]

93. Although both ARINC and SIAC generally support our new rules, they challenge the wisdom of our proposal to consider rate increases filed by non-dominant carriers as presumptively lawful. In doing so, they argue, we would violate Section 204(a) of the Act [81] by effectively shifting the burden of proof in rate hearings from the filing carrier to the opponent. Assertedly, the latter would now have the responsibility to show why the rate was unreasonable.[82] The commentors' fears in this regard, however, are unfounded.

94. The burden imposed on the filing carrier by Section 204 applies only after the Commission "upon complaint or upon its own initiative without complaint, upon reasonable notice, enters upon a hearing concerning the lawfulness thereof". 47 U.S.C. § 204(a). Our use of a presumption of lawfulness for non-dominant carrier rates is applicable to their filing and not to any hearing subsequently convened as to their lawfulness. Under the system of carrier-initiated tariff filings created by the Communications Act, *see AT&T v. FCC*, 487 F 2d 864 (2d Cir. 1973), and under our rules, 47 C.F.R. § 1.773(a), petitioners must demonstrate why a particular tariff filing should be suspended, investigated or rejected. In that sense, it may be said that our action here leaves the question of burden of proof regarding rate filings unchanged. *See also Tariffs-Evidence*, 40 F.C.C. 2d at 152. Thus, Section 204 is not applicable in the first instance. We have no intention of altering the operation of Section 204 as to the burden of proof if and when a hearing on such rates were to be initiated.

95. ARINC and SIAC also challenge our conclusion that non-dominant firms cannot charge unreasonably high rates, pointing out that because of AT&T's price leadership ability a competitive carrier could set its rates above its own costs but below those established by AT&T. This argument fails to account for the competitive pressures exerted upon the carrier seeking to charge a supracompetitive price by other non-dominant firms. We believe that the presence of multiple non-dominant firms, each striving to expand its customer base by offering the best service at the lowest prices, will preclude such a strategy from succeeding.

96. In sum, we affirm our decision to consider the tariffs of non-dominant carriers to be presumptively lawful and as such can reduce several of the tariff filing burdens we impose upon them.

C. Section 61.38 Data

97. The major tariff filing burden we now impose upon non-dominant carriers is the requirement that they support their tariff proposals with extensive cost and other economic data as set forth in Section 61.38 of our Rules, 47 C.F.R. § 61.38. Although the original purpose of Section 61.38 data was to assist us in analyzing new tariff filings by monopoly or near-monopoly carriers under the appropriate statutory standards, we found that the information would also be useful when a carrier sought to offer a competitive service so that we could implement our policy objective of maintaining competition on a full and fair basis. *Tariffs-Evidence*, 40 F.C.C. 2d at 153. Our experience over the past decade with competition, however, has demonstrated that the tariffs of competitive non-dominant carriers are to a large extent determined by marketplace forces.[83] This experience has shown also that we can rely upon competition to meet the service needs of the public at prices and under terms and conditions which do not contravene the requirements of the Act and can be presumed to be lawful.[84] Thus, in the *Notice* we tentatively found that the submission of Section 61.38 data by non-dominant competitive carriers was unnecessary, and proposed to relieve

[77] A necessary condition for a seller to practice price discrimination profitably is that it have some market power. *See* F. M. Scherer, *Industrial Market Structure and Economic Performance* Chapter II (2d ed. 1980). Non-dominant firms, by definition, do not possess market power.

[78] Direct Comments of AT&T, pp. 30–36.

[79] *See* AT&T Initial Comments in CC Docket No. 80–54.

[80] We also emphasize that not all price discrimination is condemned by the Act. Section 202(a) of the Act prohibits, *inter alia*, unjust, unreasonable or undue discrimination in rates between like services. We believe that this proscription applies when the class of customers being discriminated against has no effective alternative source of supply while customers benefiting from the discriminatorily low prices are buying service in a market with competing suppliers. The non-dominant carriers we have identified today do not offer services in markets that offer this opportunity.

[81] Section 204(a) of the Act, 47 U.S.C. § 204(a), provides in pertinent part: "[at] any hearing involving a charge increased, or sought to be increased, the burden of proof to show that the increased charge, or proposed charge, is just and reasonable shall be upon the carrier * * *."

[82] Direct Comments of ARINC, p. 18–21; Direct Comments of SIAC, p. 8–11.

[83] Indeed, MCI states that it does not have the resources to engage in sophisticated economic studies either before of after entry into the marketplace. Instead, it relies primarily on informal market feedback. Direct Comments of MCI, p. 12.

[84] *See also Customer Interconnection*, 61 F.C.C. 2d 766 (1976), and 75 F.C.C. 2d 506 (1980), in which we found that competition in the provision of customer equipment has benefited the general public by spurring innovation and meeting unmet needs.

them from having to supply this information.[85]

98. Our proposal is supported by most of the commenters; AT&T and USITA, however, argue that Section 61.38 data, at least in some modified form, should continue to be required from all carriers. According to them, elimination of tariff support materials would effectively preclude any opportunity for the public or the Commission to determine whether tariff proposals comply with Sections 201 and 202 of the Act.[86]

99. This argument is unpersuasive. Indeed, it ignores the fact that the filing of Section 61.38 data by competitive non-dominant carriers nullifies many consumer benefits that competition produces. Because the cost of developing this information is relatively great for a non-dominant carrier, the rates paid by its ultimate users are likely to be higher than if all competitive carriers were free from this unnecessary regulatory burden. Further, the required submission of these data forces a carrier to reveal to its competitors in advance the fruits of its own analysis and initiative, thereby discouraging the introduction of new innovative service offerings. And, even when a carrier decides to experiment with new service or rate changes, these existing regulations provide a vehicle for competitive harassment and delay by permitting challenges not to the merits of the filing but to the technical details of the accompanying cost support materials.[87]

100. AT&T and USITA overlook these rather significant drawbacks to requiring non-dominant carriers to file Section 61.38 data, choosing instead to concentrate on the protection such information presumably affords the public. Whatever the scope of Section 61.38, *See, Associated Press v. FCC*, 448 F.2d 1095, 1104 (D.C. Cir. 1971), *quoting American Farm Lines v. Black Ball Freight Service*, 397 U.S. 532 (1970), *IBM v. FCC*, 570 F.2d 452, 456 (2d Cir. 1978); *but see, ARINC v. FCC, supra*, Sl. Op. at 25, the information produced thereunder can only be useful when unjust and unreasonable rates are a realistic possibility. We have already explained why we do not believe this is the case here.

101. In any event, we will continue to monitor the tariff proposals of non-dominant carriers. If a tariff filing made by one of these carriers appears to be unlawful, we are empowered to extend the effective date of the tariff and require the carrier proposing it to submit supporting materials. Such an approach is far preferable to the mechanical, blanket imposition of unnecessary and costly regulatory burdens upon these carriers. We therefore adopt our proposal relieving non-dominant competitive carriers from submitting the data required by Section 61.38 of our Rules when they file their tariffs.[88]

D. Notice Periods

102. We have decided also to make final our tentative decision reducing to 14 days the advance notice period for non-dominant carrier tariff filings. Because these carriers operate in a competitive environment, they must have the flexibility to adjust their rates and practices to the demands of the marketplace without undue delay. At the same time, we recognize that some period of review may be justified. Our adoption of a 14 day notice period seeks to strike the proper balance. As such, it is no more than a modest step designed to reflect more accurately the new competitive realities while ensuring against aberrational filings by non-dominant carriers which may raise questions of lawfulness.

103. Although most commenting parties support our decision, a few suggest that we should adopt different notice periods. At one extreme, Com-Net believes that an advance notice period of 60 days is required when the service affected is being shared or resold. It argues that such a lengthy notice period is necessary in order to allow sharers and resellers sufficient time to pass cost increases through to the ultimate users.[89] Com-Net implies that the public would be benefited by the imposition of a rule designed to protect the profit margins of a class of carriers. It has not shown, nor is it at all likely that it could show, that this would be the case. Advance notice requirements, of whatever duration, create impediments to businesses attempting to respond as quickly as possible to consumer demand. Com-Net's argument offers no basis for exacerbating that impediment beyond that created by our proposed rule.

104. AT&T urges us to adopt a notice period of at least 30 days. It objects to the 14 day period as unnecessarily short and inconsistent with congressional intent in that it would deprive the public of the time needed to review a carrier's tariff filing.[90] We disagree. As we emphasized in the *Notice*, complainants do not have a statutory right to suspension or rejection. *See, e.g., Associated Press v. FCC*, 448 F.2d at 1103; *Trans Alaska Pipeline Rate Cases*, 436 U.S. 631, 638 n. 17 (1978). In any case, Congress has granted this Commission broad discretion to determine the proper notice period for tariff filings. *See AT&T v. FCC*, 503 F.2d 612 (2d Cir. 1974).[91] Even when it extended the maximum notice period to 90 days just four years ago, (P.L. 94-376 approved August 4, 1976, 90 Stat. 1080), Congress professed its expectation that we would use the full notice period only where there was a compelling reason to do so. *See* H.R. Rep. No. 94-1315, 94th Cong. 2d Sess. 3 (1976) and Sen. Rep. No. 94-918, 94th Cong. 2d Sess. 6 (1976). Moreover, our new policy provides ample protection for the public since we are retaining discretion to extend the notice period to the full 90 day period if upon our initial review (or the filing of a petition) we determine that a tariff filing of a non-dominant carrier warrants more extensive analysis. For these reasons, we reject AT&T's recommendation that we adopt a longer notice period.

105. On the other hand, SPCC believes that a one-day advance notice period for non-dominant carrier tariff filings is sufficient, pointing out that the competitive market will properly control the rates and structures proposed by

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[85] These carriers, however, would have to submit a concise information statement explaining their proposals and setting forth the basic rates, terms and conditions of serivce. We did not propose to relieve dominant carriers from providing Section 61.38 data since we have found these data are necessary to detect unlawful cross-subsidization between their competitive and near-monopoly services.

[86] Direct Comments of AT&T, pp. 60-64; Reply Comments of USITA, p. 3. *See also* Direct Comments of MCI, pp. 6-8; Direct Comments of Multimedia, p. 6; Direct Comments of Teleprompter, pp. 16-18; and Direct Comments of Communication Network Systems, p. 2.

[87] As we noted in the *Notice*, approximately three-quarters of the petitions to suspend or reject filings of competitive carriers come from other carriers rather than customers. These petitons are often based on technical deviations from Section 61.38 requirements (*Notice* para. 7). *See also RCA American Communications, Inc.*, 69 F.C.C. 2d 426 (1978).

[88] ABC, CBS, and NBC suggest that the Commission should afford regulatory recognition to contracts between competitive carriers and users by allowing relevant provisions to be filed as tariffs and by adopting a policy that tariff revisions inconsistent with the underlying contract are presumed to be unlawful. (Direct Comments pp. 4-10). Similarly, Plexus asks us to give binding effect to carrier-user contract provisions which specify notice periods for tariff changes longer than 14 days. (Direct Comments pp. 9-10) Because these requests are beyond the scope of the proposals in the Notice we will not consider them here.

[89] Direct Comments of Com-Net, p. 2.

[90] Direct Comments of AT&T, pp. 56-60. AT&T believes that all carriers should be eligible for any reduced notice period adopted.

[91] AT&T relies on language in this decision to show that our action here would undercut the purposes intended by Congress in requiring notice. The opinion, however, shows otherwise. The Court emphatically affirmed our broad discretion in this area, dismissing as frivolous the suggestion that the congressional scheme represents a plan with an immutable time table. 503 F.2d at 618.

these entities.[92] Because our goal in this proceeding is to enable the marketplace to satisfy consumer demand as effectively as possible consistent with the statutory scheme, SPCC's suggestion has some appeal. In fact, we considered a one-day advance notice period when we developed our proposals. *Notice*, paras. 56–58. Nevertheless, we believe that a 14 day period is preferable as we introduce our new policies. This period seems to provide the agency and the public adequate opportunity to review filings but allows carriers to implement their plans as quickly as possible consistent with that opportunity. Should it develop that such an extended notice period is not necessary or justified, we will alter it.

106. In sum, we have determined that the 14 day advance notice period for non-dominant carrier tariff filings as proposed in the *Notice* is reasonable and proper, and, accordingly, we adopt it.

E. Suspension Standards

107. Because the tariff proposals of non-dominant carriers could be considered presumptively lawful, we announced in the *Notice* that we would not suspend the filings of these carriers except for the most compelling reasons. To secure a suspension, a petitioner would have to demonstrate generally that the injury to competition from allowing the proposal to become effective was greater than the harm to the public from depriving it of the service proposed. In order to make this demonstration a petitioner would have to show: (1) that there is a high probability that the tariff would be found to be unlawful after investigation (likelihood of success on the merits); (2) that any harm alleged to competition (which we believe accomplishes public interest benefits) would be more substantial than that to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing (*e.g.*, that the proposed rate is predatory); (3) that irreparable injury would be suffered if suspension does not issue; and (4) that the suspension would not otherwise be contrary to the public interest. *Notice*, para. 60.

108. Among the commenting parties only AT&T challenges our proposed suspension standards, arguing that the injunctive-type relief showing necessary for suspension is at odds with the Act. Apparently, AT&T believes that such a showing would be difficult to make and thus would virtually foreclose the public's ability to secure suspension.[93]

109. The standard we propose is no more difficult than the standard commonly relied upon by the courts in determining whether to grant a stay or preliminary injunction. And, after all, the suspension power has its roots in these judicial remedies. *Arrow Transportation Co. v. Southern Railway Co.*, 372 U.S. 658, 662–669 (1963). Moreover, it is well recognized that our authority to order rate suspensions is one committed solely to agency discretion. *See id.; Southern Railway Co. v. Seaboard Allied Milling Corp.*, 442 U.S. 444 (1979); *Associated Press v. FCC*, 448 F.2d 1095 (D.C. Cir. 1971); *The Connecticut Light and Power Co. v. FERC*, No. 78–2312 (D.C. Cir. May 30, 1980). Under these circumstances, therefore, we are at a loss to perceive how any rights inherent in the Act would be violated by our proposal.

110. In any event, we believe that to the extent the procedure has the effect of discouraging frivolous petitions, the public interest and the Commission processes are well served. In our view, other things being equal, competitors should devote their time and energies to devising new and innovative services and pricing strategies rather than complaining about each other's tariffs. Thus, we reject AT&T's contention that our suspension standard is inconsistent with the Act and we have decided to adopt it.

111. Finally, we recognize that our statement in the *Notice*, para. 60, that an "important factor" in overcoming the presumption of lawfulness is whether the petitioner is a customer may have been overly broad. This statement was intended to reflect our perception that customers normally do not have strategic incentives to delay the effectiveness of a rate to protect a customer base. On the other hand, customers may have proprietary interests in preventing rate changes, particularly if those changes involve increases. We recognize that customer petitions will represent the self-interest of the petitioning party. Thus, we modify the view implied by the language in paragraph 60 of the *Notice* that customer petitions should always be viewed differently than those of petitioning competitors.

F. Financial Reports

112. In Appendix D of our Notice we proposed that eligible carriers (*i.e.*, carriers we find to be non-dominant) submit annual financial data "* * * so that we may better evaluate overall industry performance in conjunction with the proposals and observe the interplay of market forces". *Notice*, para. 32. Although these data are not required to establish the presence or absence of market power, we felt that they would be useful in monitoring the effects of the changes we are making in our regulatory approach to ensure conformance with desired effects.

113. We have decided not to impose this reporting requirement upon non-dominant carriers at this time. The Common Carrier Bureau has begun an effort to examine all reports now filed by all carriers. Thus, any modifications to the reporting requirements imposed upon non-dominant carriers will be considered during the course of that examination.[94]

G. Section 214 Regulation of Non-Dominant Carriers

114. In the *Notice* the Commission proposed to amend Part 63 of its Rules which implements the present Section 214 regulatory scheme. Plans for bifurcated Section 214 regulation, with one plan for dominant carriers and another for non-dominant carriers, were set forth. The *Notice* stated that such an approach was warranted because Congress enacted Section 214 and subsequent amendments to serve primarily as a protection against excessive expenditures on plant by rate-base regulated common carriers and against service discontinuance by carriers in areas where customers had no reasonable alternative service available. According to the rationale stated in the *Notice*, paras. 63–67, non-dominant carriers are unable to sustain the kind of business practices Congress was concerned about in adopting Section 214. These carriers are generally not in a position to pass the cost of unnecessary facilities on to customers. They are unable to extract additional revenue from some customers to recoup the costs of facilities needlessly built to duplicate other systems. Furthermore, customers in a market characterized by competition have access to alternative

[92] Direct Comments of SPCC p. 12. It also recommends that we modify the time periods for filing suspension and rejection petitions as well as replies to reflect the 14 day notice period. We have modified these procedures in a separate document, FCC 80–526 (released September 18, 1980), and hence we need not consider the issue here.

[93] Direct Comments of AT&T, pp. 36, 57, 60–64. AT&T mistakenly reads our rules as precluding an investigation of a tariff filing of a non-dominant carrier if the four-part suspension standard is not met. As always, we may consider whether tariff proposals of these carriers should be investigated, either on the basis of the petition or on our own initiative even though the petitioner fails to demonstrate that a tariff should be suspended.

[94] Pending completion of that proceeding, facilities based non-dominant carriers should continue to submit the reports that they currently file.

services should one carrier discontinue service.

115. The Section 214 regulatory scheme envisioned in the *Notice* for dominant carriers would oversee development of their comprehensive network, in contrast with the present Part 63 rules which focus primarily on circuit-by-circuit additions. Since such a regulatory program for dominant carriers will be more thorough and in some measure distinct from our regulatory policies for non-dominant carriers, we believe its development can be more efficiently accomplished in a separate proceeding. Hence, we shall initiate such a separate proceeding in the near future to develop policies and rules appropriate to dominant carriers' facility investment and utilization programs. In that proceeding we shall consider the comments which we have received about Section 214 regulation of dominant carriers in this proceeding. This approach is particularly appropriate because specific Part 63 rules for dominant carriers were not proposed in the *Notice*. Dominant carriers will, of course, remain subject to present Part 63 regulation until new rules are adopted.

116. To briefly summarize our conclusions, we here adopt two new Part 63 rule sections implementing a revised program of Section 214 oversight for non-dominant carriers. Section 63.07 and 63.71 follow proposals made in the *Notice* in large measure. These rules are contained in Appendix A. Section 63.07 covers initial certification of new carriers, authorization of existing carriers to serve new points and to build underlying facilities, and notification to the Commission when a carrier channelizes existing facilities. After consideration of the comments on Part 63 proposals contained in the *Notice*, we have revised the geographic area for which initial certification is normally obtained to the continental United States unless otherwise requested.[95] Subsection 63.07(b) as implemented also provides that no Section 214 authorization is needed prior to initiating service over satellite transponders. Although we have found that Domsats are dominant for purposes of these rules, for purposes of our Section 214 authorization program, we will no longer make any significant distinction between transmission via terrestrial and earth station radio facilities. In addition, we have revised Section 63.07 to require only semiannual reporting of circuit additions over previously authorized transmission facilities as opposed to the proposed 30 day reporting requirement. The rule regarding service discontinuance is substantially unchanged from the proposal set forth in the *Notice*. We are convinced that, in the context of an increasingly competitive domestic communications market, the new Section 214 regulations for non-dominant carriers will result in the best balance of our responsibilities to certify and to review discontinuance, to monitor the growth of competitive services, and to ensure efficient use of the radio spectrum, while minimizing regulatory entry and exit barriers. In the following paragraphs we discuss the various issues raised by our Section 214 regulatory scheme for non-dominant carriers and explain our conclusions.

1. *Legal Authority*

117. Comments focused on two principal legal issues raised by the proposed Section 214 regulations: whether bifurcated Section 214 regulation of dominant and non-dominant carriers is permissible under the Act and whether, under the proposed rules for non-dominant carriers, the Commission will be able to fulfill its public interest responsibilities under Section 214. We have already concluded in paragraphs 29 through 53, *supra*, that the proposals set forth in the *Notice* for the different regulation of dominant and non-dominant carriers comply with our mandate under the Act. For this reason, we limit our discussion here to the legality of the Part 63 rules for non-dominant carriers.

118. Alascom and USITA, who challenge the new Part 63 rules for non-dominant carriers, contend that they do not elicit sufficient information upon which the Commission can make the Section 214(a) finding that particular facilities or services will serve the public interest. USITA also comments that if the Commission authorizes geographic service areas it will evade its responsibility to certify lines. We disagree. Section 214(a) provides that no carrier is to construct, extend, acquire, operate or engage in transmission over a line unless it first obtains from the Commission a "certificate that the present or future public convenience and necessity" is advanced by this activity. We believe that Section 214 is a broad mandate delegated to the Commission by Congress to allow the development of the telecommunications industry in a way likely to achieve the purpose of the Act as specified in 47 U.S.C. § 151. We have reasonably assessed that those overall purposes are best fulfilled by reduced entry and exit barriers, combined with continued monitoring of significant facility investment by those carriers capable of imposing ratepayers with the burden of the cost of those investments.

119. The Supreme Court has determined that the Commission has considerable discretion in deciding how to make its Section 214 public interest finding. *FCC v. RCA Communications, Inc.*, 346 U.S. At 90. Section 214(a) imposes no detailed procedural requirements.[96] *ITT World Communications, Inc. v. FCC*, 595 F.2d 897, 900 (2d Cir. 1979). It does not restrict the Commission in the implementation of its regulatory program other than by requiring that it apply the "public convenience and necessity test" reasonably. Nor does the Act specify the amount or type of informaiton to be obtained from applicants. *AT&T v. FCC*, 572 F.2d 17 (2nd Cir.), *cert. denied*, 439 U.S. 847 (1978). Certain parts; of the current rules already require less comprehensive information for small projects and even provide, in some cases, for continuing authority to supplement existing facilities upon notification only. *See* 47 CFR §§ 63.02, 63.03.

120. The Commission, of course, has authority to set overall regulatory policies applicable to common carrier communications when it perceives this approach to be in the public interest. We have exercised this authority in the past to reduce the showing required under Section 214 of competitive entrants in various communications markets. Such policies have been sustained by the courts. *See, e.g., Washington Utilities and Transportation Commission v. FCC*, 513 F.2d at 1160–65. There the Commission had received almost 1700 applications filed by companies desiring to provide certain services in competition with the established

[95] We have selected the continental United States as the appropriate geographic area for initial authorizations because we are not yet convinced that there are no specific policy, legal, economic or facility program issues involved in service to offshore points which require individual consideration. See paras. 132–134, *infra*. For example, outstanding issues regarding Alaska services are discussed in the *Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, MTS and WATS Market Structure Inquiry*, FCC 80–463 (rel. August 25, 1980). In addition, Hawaii and Puerto Rico/Virgin Islands are linked to the continental United States by underseas telephone cables which are constructed and operated as part of the international communications network. We have not yet had an opportunity to address the relative use of such facilities by international and domestic carriers and the potential impact on international services. Of course, such unresolved questions should not inhibit requests for initial certification to serve these offshore areas.

[96] As distinguished from Section 214(a), Section 214(b) makes a notice procedure obligatory and Section 214(d) provides for a hearing procedure.

telephone companies. Rather than assess each of these applications individually under Section 214 and Title III of the Act, the Commission analyzed the performance of the telecommunications industry and the likely effects on that performance resulting from the commencement of service by these competing applicants. After having made general findings on these issues, the Commission made the findings required by Section 214 and Title III in the form of a broad policy of general applicability to all entrants within the class known as "Specialized Common Carriers."

121. On Appeal, the Commission's ability to make the findings required by Section 214 in this fashion was directly challenged. After a lengthy discussion of the breadth of the Commission's "sweeping mandate", 513 F.2d at 1157, and the Supreme Court's holding in *FCC v. RCA Communications, Inc.*, 346 U.S. 86 (1953), the court specifically upheld the adequacy of the Commission's authority and the reasonableness of its exercise of that authority in making its findings in this manner.

122. Similar policy decisions regarding the domestic satellite carrier and the resale carrier markets were judicially approved. *See Network Project v. FCC*, 511 F.2d 786 (D.C. Cir. 1975); *AT&T v. FCC*, 572 F.2d 17 (2nd Cir.), *cert. denied*, 439 U.S. 847 (1978). Our attempt to fashion efficient methods for meeting our responsibilities is thus only the latest in a series of cases where we have exercised our discretion under Section 214 in a reasonable manner to comport with the practical realities confronting us.

123. It would make no sense whatsoever, having adopted general policies favoring freer competitive entry, to retain rules which require a circuit-by-circuit analysis of each new proposal. Under the circumstances, a general certification for a carrier to serve a given area, with reports of circuit additions made periodically, fully satisfies the requirements of the Act and is consistent with our regulatory policies. However, underlying transmission facilities (as opposed to circuit additions by multiplex or lease) will continue to be licensed under Title II on a case by case basis. *See* paragraphs 138–139 below.

124. Section 214 and pertinent precedent do not sustain the related argument advanced by Alascom that a special Section 214 procedure is required for Alaska service. We have already addressed Alascom's sole source arguments in the *MTS and WATS Market Structure Inquiry*, 67 F.C.C. 2d 757 (1978), *Supplemental Notice* 73 F.C.C. 2d 222 (1979), Second *Supplemental Notice*, FCC 80–198 (rel. April 16, 1980), *Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking* FCC 80–463 (rel. August 25, 1980). Any policy ultimately adopted concerning MTS/WATS service to Alaska, or any other domestic area, can be accommodated under the new rules.

125. The eased Section 63.07 certification requirements are in accord with the intent of Congress when it enacted Section 214(a). One major reason for the enactment of both these sections was the prevention of wasteful facilities duplication. Representative Sam Rayburn, Chairman of the committee sponsoring the Communications Act, stated, "[t]he section is designed to prevent *useless* duplication of facilities, *with consequent higher charges* upon the users of the service." 78 Cong. Rec. 10314 (1934) (emphasis added).

126. Certainly, facilities duplication is not a problem to be guarded against in the case of resale carriers. They do not construct facilities. Furthermore, as discussed in paragraph 114, *supra*, all other non-dominant carriers lack the incentive to overinvest. They cannot pass the cost of duplicative or needlessly costly facilities on to customers through higher charges. Rather than pay higher rates, customers in competitive communications markets will instead turn to other service providers.

127. Because we do not foresee that non-dominant carriers can engage in socially harmful facilities duplication, we believe that a new rule, Section 63.07, which reduces the certification requirement for competitive carriers, is consistent with congressional intent in enacting Section 214.

128. The legislative history of the Section 214 discontinuance provision supports the minimal restrictions of Section 63.71 for competitive carriers. The pertinent portion of Section 214(a) states: "[n]o carrier shall discontinue, reduce or impair service to a community, or part of a community, unless and until there first shall have been obtained from the Commission a certificate that neither the present nor future public convenience and necessity will be adversely affected thereby * * *". Congress added this discontinuance requirement in 1943, in part, to minimize service disruptions which Congress envisioned would result from the complete monopolization of the telegraph market due to the merger of Western Union and Postal Telegraph. 89 Cong. Rec. 785–787 (1943). The record shows that Congress was concerned that discontinuance by the only carrier serving a market, such as Western Union, would leave the public without adequate communications service. Thus, simplifying applications for discontinuance of service, when service alternatives are likely to exist, is consistent with congressional intent.

129. In the same vein, we have already completely eliminated those rule sections dealing with telegraph office and agency closings, concluding that, "* * * application of Section 214 in situations where the accessibility of a service remains virtually unchanged, while the method of customer access varies, is not required by the statute and would be inappropriate in a technologically dynamic market." *Regulation of Domestic Public Message Service*, 75 F.C.C. 2d 345, 376–77 (1980).[97] Thus, it is clear that we do not evade our Section 214 responsibilities by adopting streamlined procedures for non-dominant carriers.

2. *Initial Certification of Non-dominant Carriers*

130. Proposed Subsection 63.07(a) set forth initial certification requirements for parties seeking to become authorized domestic non-dominant common carriers. It required applicants to provide the Commission with a completed Common Carrier Radio License Qualifications Report;[98] information about the type of service to be offered and the cities or geographic area where service is to be offered; the initial number of circuits to be installed or leased; the construction or lease cost of facilities; and the identity of the lessor if one is involved. Proposed Subsection 63.07(b) stated that carriers relaying only television signals over radio facilities authorized to the carrier would not need to obtain Section 214 authorization except for the proposed use of satellite facilities.

131. The overwhelming number of parties commenting on the subject

[97] Public coast stations in the maritime mobile service have traditionally been regulated as common carriers. While we are excluding consideration of public coast stations from this Docket, we will study them in the context of the economic, legal and policy considerations of this Docket and, if appropriate, initiate a separate proceeding with respect to coast stations. Our purpose would be to minimize the regulation of this service consistent with the considerations of this Docket. We have already initiated rulemaking proceedings on exempting certain coastal VHF stations from the radiotelephone distress frequency watch obligation, P.R. Docket No. 79–68, and on deleting rules limiting the establishment of new Class III–B public coast stations, P.R. Docket 80–144.

[98] This report, FCC Form No. 430, requests basic information about the corporate structure and qualifications of a carrier. It is now retitled "Common Carrier and Satellite Radio Licensee Qualification Report".

favored the draft initial certification procedures. Comments endorsing the new approach stated that the present authorization rules impose an unnecessary regulatory barrier to entry because competitive carriers would not benefit from overinvestment. They contend that certification under Section 214 is primarily a method to assure that rate-base regulated carriers, who earn a return based on facilities investment, do not inflate their rate-base through overbuilding, and that non-dominant carriers, whose returns are governed by market competition, lack the incentive to overinvest. Hence, they contend that certification does not perform the same role in policing the investment decisions of competitive carriers. Additionally, according to the comments, the present certification approach can delay service commencement and inhibit innovation. These comments state that a reduction of regulatory costs should result in lower prices to the public.[99]

132. Comments on the new initial certification provisions focused on the one issue of how to define the geographic service area authorized. Most commenting parties were in agreement that this initial authorization should be as comprehensive as possible. USITA, however, as noted above, contended that geographic service area authorization amounts to abdication by the Commission of its responsibility to certify "lines."

133. We have revised the proposed rule on initial certification to be consistent with the preponderance of comments recommending that the initially certified area of service should be a broad one. Under the rule adopted, all applicants for initial certification will now routinely receive authority to serve the continental United States unless they specify otherwise. Applicants seeking authority for other domestic points must still so indicate. Those non-dominant carriers already certified under the prior procedures who received initial certification for areas less comprehensive than the continental United States will by this order be automatically certified for service to the entire continental United States. In all other respects the substance of Subsection 63.07(a) does not deviate from the proposed rule.

134. By certifying carriers initially for the continental United States, we are moving away from point pair authorization as implemented in the current Part 63 rules. We do so because we expect that successful carriers will continue to expand incrementally after their initial certification within the continental United States, which we believe is a natural contiguous market. We thus seek to obviate additional routine filings which such expansion would necessitate under current regulation. Since carrier expansion to non-domestic offshore points could possibly raise peculiar problems we shall still require carriers seeking to serve these points to apply for authorization.[100] This should not be interpreted, however, as necessarily reflecting a different policy for such offshore areas. Rather, we have selected the continental United States as the appropriate geographic area for authorizations because we are not yet convinced that there may not be specific policy, legal, economic or facility program issues involved in service to other points which require individual consideration. Absent a showing of such special consideration, however, we intend these policies to be fully applicable to other points.

135. Subsection 63.07(b), as proposed, codified our existing practice with respect to the relay of television signals over authorized facilities. Under the proposed rule no prior Section 214 authorization was necessary for the relay of television signals (including both video and associated audio), over terrestrial radio facilities already authorized under Title III of the Act. Final Subsection 63.07(b) follows this proposal by not requiring video relay carriers to obtain prior certification aside from the initial radio (or other transmission) authorization.

136. With respect to the delivery of video signals by satellite, however, our practice has been to require prior Section 214 authorization for each transponder used in that way. Hence, Section 63.07(b) as proposed excepted satellite transmission of television signals, still obliging satellite carriers to obtain prior authorization on a transponder by transponder basis under Part 63 before establishing video relay channels. According to the *Notice*, we made this exception because only a small number of applications, of a type that had raised substantial policy issues in the past, were involved. In comments on behalf of various terrestrial video relay common carrier clients, the law firm of Gordon & Healy endorsed this proposed exclusion of satellite television relay channels from the relaxed certification requirements. On the other hand, Southern Satellite, a satellite resale carrier, contended that the *Notice* gave no policy justification for this exception.

137. Although we have determined that Domsats are dominant for the purpose of these final rules, we now believe that there is no basis in the record for treating the authorization for each channel of a previously reviewed facility differently in either terrestrial or satellite facilities. Grant of a satellite or earth station application under Title III is based on the fact that there is need for the facility. Individual channels at a particular earth station can generally be easily added or deleted, or rerouted to different distant earth stations with minimum expense, to rapidly adapt to changing customer requirements. Given this inherent flexibility in satellite communications, a requirement for prior circuit-by-circuit Section 214 authorizations would only delay or inhibit satellite service to customers without any countervailing regulatory benefits. Thus, we have concluded that a separate Section 214 certification requirement applicable only to video and on a transponder by transponder or circuit-by-circuit basis can also be removed for domestic satellite carriers where present procedures result in duplicative regulation. Specifically, the Section 63.07(b) exemption from a separate Section 214 certification requirement will be expanded to include carriers providing video relay services within the United States. In addition, the same exemption would apply to the activation or placing into service of transponders on newly launched satellites that have been successfully positioned in orbit pursuant to a Commission issued launch authorization.[101] As discussed in paragraph 142 below, the only regulatory requirement which we shall apply to domestic satellite carriers will be the circuit reporting requirements of Section 63.07(e). We shall, of course, need certain information on the use of satellite capacity in order to adequately monitor use of the limited geostationary orbit. However, this can be accomplished through after-the-fact reports.

[99] Certain commenting parties recommended extension of new Section 63.07 to dominant carriers. Certification procedures for these carriers will be dealt with in a separate proceeding. *See* para. 115 *supra*.

[100] We have already discussed the particular problems which arise when domestic satellites are used for international services to foreign points. *See Deregulation of Domestic Satellite Receive-Only Earth Stations*, 74 F.C.C. 2d 205, 219 n. 27 (1979). Of course, the Section 63.01 certification requirement for extending domestic services to such international points remains in effect.

[101] The fact that explicit Section 214 certification is not required is not to be used as the basis of an argument that the satellite is entitled to be located at any specific orbital location. Satellite carriers must, of course, still obtain authorization under Title III.

3. *Additional Certification*

138. Subsection 63.07(d) as proposed set forth procedures under which previously certified carriers applied for authority to add new points or areas of service or to construct an interstate non-radio transmission medium in excess of 10 miles. Applications under this proposed rule were to include the name and address of the applicant; the points to be served or between which facilities were to be constructed; the type and number of initial circuits between terminal points; the construction or lease cost; the identity of any lessor involved; and an environmental impact statement if necessary. Commenting parties generally supported these proposed procedures. Plexus did question whether authority to serve additional points or to construct cable could be automatically granted within fourteen or twenty-one days after the public notice date.

139. Final regulations governing certification for additional service areas or for underlying facilities construction have not been substantially changed from those set forth in the *Notice*. Draft Subsection 63.07(d) has, for the sake of clarity, been broken into two subsections. Subsection 63.07(c) deals with applications to serve new domestic areas outside the continental 48 states.[102] Subsection 63.07(d) covers authorization for any interstate non-radio transmission medium (*e.g.*, a cable) in excess of ten miles.[103] Both subsections require disclosure of essentially the same information as was proposed in draft Subsection 63.07(d). Carriers seeking authorization for additional transmission facilities are directed to specific rule sections which they can consult to ascertain whether they must submit an environmental impact statement.[104] We have rejected Plexus' suggestion that grants under these subsections be automatic after two or three weeks have elapsed because we want to ensure, at least initially, that applications under Subsections 63.07 (c) and (d) do not raise possible policy concerns.

4. *Notification of Circuit Additions*

140. Draft Subsection 63.07(c) governed notification to the Commission when non-dominant carriers lease or install additional circuits in transmission facilities. Under this proposal carriers would be free to implement such additional circuits. However, within 30 days of starting service over these additional circuits, they would provide the Commission with information on the type, number and terminal points of additional circuits; their construction or lease cost; the identity of any lessor involved; and the date of public service commencement over the added circuits. Comments favored this notification approach because it would significantly lessen carriers' reporting obligations. However, a number contended that the thirty-day reporting period as proposed would be too cumbersome. The comments suggested that the Commission could monitor market dynamics through less frequent reports.

141. We generally agree with these comments. For this reason, the final rule (Subsection 63.07(e)), requires only semiannual reporting. Reports are to be filed on February 1 and August 1 of each year for the immediately preceding six month period. We have, however, reserved the right to require carriers to provide supplemental information on an interim basis if needed. We believe this regularized reporting scheme will reduce the burden on both the carriers and the Commission staff, while at the same time providing information of sufficient currency and extensiveness to allow us to fulfill our statutory responsibilities.

142. In connection with our decision to eliminate duplicative Section 214 oversight of satellite carriers, we shall require that satellite carriers provide us with additional information under Section 63.07(e). Carriers offering domestic satellite service, either by means of their own transmitting earth stations or by the lease of transponder capacity when the earth station network is operated entirely by noncarrier entities, must include in their semiannual report the identity of the satellite(s) being used and of their loading on a transponder-by-transponder basis.[105] Since we do not presently have satellite technical standards comparable to the channel loading requirements of Part 21 governing terrestrial microwave stations, this information will provide a minimum data base regarding the loading and utilization of limited in-orbit domestic satellite orbital capacity.

5. *Discontinuance, Reduction or Impairment of Service*

143. Our proposed procedures for discontinuance, reduction or impairment of service required a carrier to inform its customers that it was seeking discontinuance authority from the Commission. Under proposed Section 63.71 a carrier was to provide the Commission with a description and date of the planned discontinuance, (or reduction or impairment); the points or geographic areas of service; and the dates and method of notice to affected customers. The proposal stated that the Commission would ordinarily automatically grant the discontinuance application after 30 days unless the carrier applying for discontinuance authorization was notified by the Commission to the contrary.

144. Most commenting parties endorsed this proposal. Several parties raised the issue of whether the notice period prior to service discontinuance was sufficiently long. Others recommended that the carrier seeking discontinuance authorization be asked to prove that service alternatives are available.[106] These parties emphasized how disruptive service discontinuance can be for customers. According to the comments, customers frequently need more than 30 days to negotiate alternate service contracts.

145. Final Section 63.71 corresponds closely with the approach taken in the *Notice*. The content of new Section 63.71 is substantially the same as that proposed. We have made some stylistic changes to clarify the rule. We have also specified that written notice to each affected customer is required unless the Commission authorizes, in advance for good cause shown, another form of notice.

146. We recognize that service discontinuance can be disruptive to customers. We believe, however, that we are offering customers a fair degree of protection by requiring carriers to notify all customers of discontinuance plans and by providing customers with an opportunity to inform the Commission of resultant hardships. In the final rule we have retained the right

[102] This procedure for additional certification does not imply that authority for offshore points cannot be requested in an initial certification application filed under Section 63.07(a).

[103] Authorization of the underlying physical transmission lines under Section 214 may be considered to be parallel to the authorization of radio facilities under Title III of the Act.

[104] In this regard, we find and conclude that the adoption of our new regulatory policies is not a major federal action significantly affecting the environment within the meaning of the National Environment Policy Act of 1969, 42 U.S.C. § 4322, or under our Rules, 47 C.F.R. § 1.1301. *See Washington Utilities & Transportation Commission v. FCC*, 513 F.2d at 1168.

[105] This Section 214 reporting requirement does not supercede any transponder loading information required to be filed pursuant to our Title III regulatory program, such as data related to specific radio frequency carrier assignments, in actual use within the authorized frequency band or data related to assessing the impact of the operation of small diameter earth station antennas on intersatellite interference levels.

[106] AT&T in its comments favored offering the opportunity to exit freely to whichever carrier in a competitive market chooses to exist first until only one carrier remains. This proposal will be considered in our forthcoming proceeding dealing with Section 214 regulation of dominant carriers.

to delay grant of a discontinuance authorization if we believe an unreasonable degree of customer hardship would result.

147. Nonetheless, in a competitive marketplace ease of exit is essential. If regulatory exit barriers are not lowered, carriers may be discouraged from entering high risk markets for fear that they may not be able to discontinue service in a reasonably short period of time if it proves unprofitable. Ease of exit is also a fundamental characteristic of a competitive market. We have already found that the overall public is best served in these areas by the development of this competition, even though some customer dislocations might be attendant thereto. We believe that Section 63.71 [107] strikes a good balance between the need to reduce regulatory barriers to exit from competitive markets and our responsibility to ensure that the public served will be given a reasonable period of time to make other service arrangements.

VI. Ordering Clauses

148. Accordingly, IT IS ORDERED, pursuant to Section 4(i), 4(j), 201, 202, 203, 204, 205, 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151(j), 201, 202, 204, 205, 214 and 403, and Section 553 of the Administrative Procedure Act, 5 U.S C. § 553, that Parts 61 and 63 of the Commission Rules and Regulation, 47 C.F.R. §§ 61 and 63 are amended effective November 28, 1980, as set forth in Appendix A attached; [108] and

149. IT IS FURTHER ORDERED, That all non-dominant carriers who have already been certified under Section 214(a), 47 U.S.C. § 214(a), to serve areas less comprehensive than the continental United States are hereby certified for service to the entire continental United States.

(Secs. 1, 2, 4, 201–205, 208, 215, 218, 313, 314, 403, 404, 410, 602; 48 Stat as amended; 1064, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 152, 154, 201–205, 208, 215, 218, 313, 314, 403, 404, 410, 602)

[107] The State of Alaska in its comments recommended that RCA Americom and any other carrier serving Alaska by satellite should be subject to traditional Section 214 service discontinuance requirements. Because RCA Americom will not be eligible for these relaxed procedures, we need not address Alaska's contentions at this time. Nevertheless, we believe that rule Section 63.71 sets forth procedures by which interests of the State of Alaska can be fully represented to this Commission if any non-dominant common carrier seeks to discontinue Alaska service.

[108] The Commission finds that because these amendments relieve restrictions on competition and public benefits will be derived from putting them into effect without delay, an immediate effective date is in the public interest. See 5 U.S.C. § 553(d).

Federal Communications Commission *

William J. Tricarico,

Secretary.

Attachment.

October 30, 1980.

Separate Statement of Commissioner Abbott Washburn

Re: The First Report and Order in D. 79-252

I am gratified to see this Commission's policies made sufficiently flexible to account for the vastly different situations of the common carrier companies. In the area of competitive services, the public has suffered from delays in the introduction of innovations caused by regulatory lag as well as the delaying tactics of competitors who use the regulatory system to maintain their marketplace position. Today's action would minimize the opportunities for such delays by streamlining our tariff filing and facilities authorization procedures.

However, in categorizing all independent telephone companies, all domestic satellite carriers, all domestic satellite resellers, and the miscellaneous common carriers as "dominant", the Commission establishes several regulatory myths—unfortunately durable ones that tend to survive, like the locust's brittle armor after life itself has departed.

It is true that the 1500 independent telephone companies control essential local distribution facilities. But this control of the so-called "bottle-neck" facilities does not provide any control over interstate pricing The independent telephone companies merely concur in AT&T's interstate tariffs and virtually all of their interstate revenue (representing 50%–90% of their total operating revenues) comes from settlement payments by AT&T. In Paragraph 56 of the First Report and Order it states, "Market power refers to the control a firm can exercise in setting the price of its output". Since AT&T sets the price, it alone among telephone companies is dominant.

Western Union faces a formidable array of potential competitors, a Who's Who in American business including: Bell's Advanced Communications Systems; Exxon's Qyx; GTE's Telenet subsidiary; RCA's, ITT's, and Xerox's International Record Carrier subsidiaries; IBM's, Aetna's, and Comsat's Satellite Business Systems partnership and, through resale, the customized corporate data networks of the rest of the Fortune 500.

Any one of these firms has the technical expertise, the nationwide sales and maintenance force, and a sufficiently "deep-pocket" to capitalize on any significant pricing errors in Western Union's Telex/TWX service.

Today Western Union, RCA, and AT&T/GTE operate domestic satellite systems serving the U.S. There are on file with this Commission, applications for four additional domestic satellite systems (SBS, Hughes, SPCC, G Sat) to serve the U.S. domestic market. If all these applications are approved, we will then have available triple today's communications capacity in orbit. To group these highly competitive firms together for the purpose of attaching a "dominant" label would seem to either imply collusion, in violation of the anti-trust laws, or to ignore marketplace realities. Again Paragraph 56 states, "Market power refers to the control *a firm* can exercise in setting the price of its output" (emphasis added). This definition properly does *not* include groups of firms such as all domestic satellite carriers.

The inappropriateness of grouping domestic satellite carriers as a single entity applies even more forcibly to domestic satellite resale carriers. To classify the Greater Starlink Corporation and Equatorial Communications Services in the same "dominant" category with the world's largest firm, AT&T, is misguided.

* See attached separate statement of Commissioner Washburn.

Appendix A—Final Rules

PART 61—TARIFFS

Part 61 of the Commission's Rules, 47 CFR Ch. I is amended as follows:

1. Table of Contents is amended by adding new §§ 61.15a and 61.39 as follows:

Definitions

* * * * *

§ 61.15a Dominant/non-dominant carrier.

* * * * *

In General

* * * * *

§ 61.39 Tariff filings for service offerings by non-dominant carriers.

2. Section 61.15a is added to read as follows:

§ 61.15a Dominant/non-dominant carrier.

(a) The term dominant carrier whenever used in this Part means a carrier found by the Commission to have market power (*i.e.* power to control prices.)

(b) The term non-dominant carrier whenever used in this part means carriers not found to be dominant. This definition shall not apply to carriers providing mobile radio service, Multipoint Distribution Service, or international record or voice service.

3. Paragraph (f) of § 61.38 is revised to read as follows:

§ 61.38 Material to be submitted with letters of transmittal by filing carriers.

* * * * *

(f) *Exception.* The requirements of this section shall not apply to non-dominant carriers, and in any event shall not apply to any carrier with annual gross revenues of less than $200,000. Annual gross revenues shall be calculated on the basis of gross revenues for the most recent 12-month period or on the basis of the average of three years estimated annual gross revenues, whichever is greater.

4. A new § 61.39 is added to read as follows:

§ 61.39 Tariff filings for service offerings by non-dominant carriers.

(a) Every tariff filing of a non-dominant carrier shall be accompanied with a statement (preferably in the letter of transmittal) which shall briefly summarize the filing, its purpose, and whether any prior Commission facility authorization necessary to its implementation has been obtained.

(b) Except as provided in paragraph (e) of this section, tariff filings involving domestic service of carriers found by the Commission to be non-dominant need not be accompanied by the support material required by § 61.38.

(c) Any tariff filing complying with the requirements of this Section shall be considered to be *prima facie* lawful and will not be suspended unless a party requesting suspension is able to show each of the following:

(1) That there is a high probability that the tariff would be found to be unlawful after an investigation;

(2) That any harm alleged to competition would be more substantial than the injury to the public arising from the unavailability of the service pursuant to the rates and conditions proposed in the tariff filing;

(3) That irreparable injury will result if suspension does not issue; and

(4) That the suspension would not otherwise be contrary to the public interest.

(d) The Commission may, at any time, request of any carrier filing tariffs pursuant to this Section to submit any information or data necessary to determine the lawfulness of any tariff filing. In such event, the carrier shall be prepared to submit such information within seven (7) calendar days (or longer period established by the Chief of the Common Carrier Bureau) of the date it is requested.

5. A new paragraph (f) to § 61.58 is added to read as follows:

§ 61.58 Notice requirements.

* * * * *

(f) Tariff filings of carriers found by the Commission to be non-dominant may be filed on 14-day's notice to the public, notwithstanding the requirements of paragraphs (b) and (c) of this section.

PART 63—EXTENSION OF LINES AND DISCONTINUANCE OF SERVICE BY CARRIERS

Part 63 of the Commission's Rules, 47 CFR 63, is amended as follows:

1. The Table of Contents is amended by adding new §§ 63.07 and 63.71 to read as follows:

Extensions and Supplements

* * * * *

§ 63.07 Special procedures for non-dominant domestic carriers and domestic satellite common carriers.

* * * * *

Discontinuance, Reduction, and Impairments

* * * * *

§ 63.71 Special procedures for discontinuance, reduction or impairment of service by non-dominant carriers.

* * * * *

2. A new § 63.07 is added to read as follows:

§ 63.07 Special procedures for non-dominant domestic common carriers and domestic satellite common carriers.

(a) Any party who is or who seeks to be certified as a domestic interstate communications common carrier and who the Commission has not found to be dominant as this term is defined in § 61.15(a) of this Chapter shall be subject to the following procedures in lieu of those specified in §§ 63.01 through 63.04 and 63.03. Except as indicated in paragraph (b) below, applications for initial certification to become an interstate communications common carrier shall include the following:

(1) Caption—"Section 63.07(a) Application";

(2) Name and address of the applicant;

(3) Completed copy of FCC form 430 ("Common Carrier and Satellite Radio Licensee Qualification Report");

(4) Description of the type of service to be offered;

(5) Area where service is to be offered (unless otherwise specified this service area will be deemed to be the continental United States);

(6) Type, number and terminal points of initial circuits to be installed or leased;

(7) Construction and/or lease cost of initial facilities;

(8) Identity of lessor, if leased facilities are to be used; and

(9) Any other information the Commission may require.

(b) Separate authorization is not required for the relay of television signals (video and associated audio) over authorized radio facilities (or for the use of satellite transponders). The radio authorization will constitute any necessary certification under Section 214 of the Communications Act.

(c) Any certified non-dominant carrier who seeks to serve new domestic points not previously authorized shall file an application which shall include the following:

(1) Caption—"Section 63.07(c) Application";

(2) Name and address of applicant;

(3) Description of the type of service to be offered;

(4) Points of service to be added;

(5) Type, number and terminal points of circuits to be installed or leased;

(6) Construction and/or lease cost of any facilities involved;

(7) Identity of lessor, if leased facilities are to be used; and

(8) Any other information the Commission may require.

(d) Any certified non-dominant carrier who seeks to construct an interstate on-radio transmission medium (e.g. cable) in excess of 10 miles shall file an application which shall include the following:

(1) Caption—"Section 63.07(d) Application";

(2) Name and address of applicant;

(3) Description of the type of service to be offered;

(4) Type, number and terminal points of circuits to be installed;

(5) Construction cost of facilities involved and

(6) Environmental impact statement if required under 47 CFR §§ 1.1303, 1.1305 and 1.1311, and

(7) Any other information the Commission may require.

(e) Unless specifically requested by the Commission to provide supplemental information, any certified non-dominant or domestic satellite carrier who installs or leases additional circuits over previously authorized radio or non-radio transmission medium within a previously authorized service area does not need separate authorization provided that reports of these circuit additions are made to the Commission within six months after initiation of service over such additional facilities. These reports shall be filed on a consolidated basis on February 1 and August 1 of each year for the immediately preceding 6 months period. These reports shall include:

(1) Caption—"Section 63.07(e) Report", including initial certification file number;

(2) Name and address of carrier;

(3) Type, number and terminal points of circuits added; (in addition, if service is provided via satellite, the identity of the satellite(s) and a transponder-by-transponder loading);

(4) Construction and/or lease cost; and

(5) Identity of lessor, if leased facilities are to be used.

Note.—The provisions of § 63.04 apply to all requests for temporary authorization under §§ 63.07(a), (c) and (d) above.

3. A new § 63.71 is added to read as follows:

§ 63.71 Special procedures for discontinuance, reduction or impairment of service by non-dominant carrier.

Any non-dominant carrier as this term is defined in § 61.15(a) of this Chapter and who seeks to discontinue, reduce or impair service shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.62 and 63.64 through 63.601:

(a) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. Notice shall include the following:

(1) Name and address of carrier;

(2) Date of planned service discontinuance, reduction or impairment;

(3) Points or geographic areas of service affected;

(4) Brief description of type of service affected; and

(5) The following statement:

The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, D.C. 20554, referencing the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable sustitute service.

(b) The carrier shall file with this Commission, on or after the date on which notice has been given to all affected customers an application which shall contain the following:

(1) Caption—"Section 63.71 Application";

(2) Information listed in § 63.71(a)(1) through (4) above;

(3) Brief description of the dates and methods of notice to all affected customers; and

(4) Any other information the Commission may require.

(c) The application to discontinue, reduce or impair service shall be automatically granted on the 31st day after its filing with the Commission without any Commission notification to the applicant unless the Commission has notified the applicant that the grant will not be automatically effective.

§ 63.61 [Amended]

4. Section 63.61 is amended to read as follows:

Any carrier subject to the provisions of Section 214 of the Communications Act of 1934, as amended, except any non-dominant carrier as this term is defined in § 61.15(a) of this Chapter, proposing to discontinue * * *.

§ 63.90 [Amended]

5. Section 63.90(a) is amended to read as follows:

(a) Immediately upon the filing of an application or informal request (except a request under § 63.70 or § 63.71) for authority * * *.

Appendix B.—*Parties Filing Direct or Reply Comments*

Commenting party [1]	Direct comments	Reply comments
Areonautical Radio (ARINC)	X	X
Alascom	X	
ABC, CBS, NBC	X	X
American Facsimile Systems	X	X
American Microwave & Communications, Inc	X	
American Satellite Corp	X	X
American Telephone & Telegraph Co (AT&T)	X	X
Association of Data Processing Service Organizations (ADAPSO)	X	X
Cablecom-General	X	
Central Telephone & Utilities Corp	X	
Communications Network Systems (Com-Net)	X	
Council of Wage and Price Stability (COWPS)	X	
Eastern Microwave	X	
Garden State Microwave	X	
Garryowen Corp	X	X
Gordon & Healy	X	X
Graphnet	X	X
GTE Telephone Co	X	
GTE Telenet	X	X
ISA Communications Services	X	X
MCI	X	
Mid-Kansas Inc	X	
Midwestern Relay	X	
Multimedia Cablevision	X	
National Cable Television Association (NCTA)		X
National Telecommunications and Information Administration (NTIA)	X	
Plexus Corp	X	X
RCA Amencom		X
Rochester Telephone	X	
Satellite Business Systems (SBS)	X	X
Securities Industry Automation Corp (SIAC)	X	X
Southern Pacific Communications Company (SPCC)	X	X
Southern Satellite Systems (SSS)	X	X
State of Alaska	X	
Teleprompter Corp	X	
Tymnet	X	X
United States Independent Telephone Association (USITA)	X	X
United States Telephone and Telegraph Co (UST&T)	X	X
United Telecom	X	
United Video	X	
Western Telecommunications	X	
Western Union	X	X
Western Union International		X

[1] Several parties including Metromedia, the Motion Picture Association of America (MPAA), the Commissioner of Baseball the NBA and NHL, and ABC have filed direct or reply comments in this phase of the proceeding detailing their positions on the Commission's power to forbear from Title II regulation and the definition of a communications common carrier. Their comments therefore will be summarized in the document dealing with those issues.

Appendix C—Summary of Comments

1. Parties commenting in response to the Commission's proposals to reduce regulatory burdens in the competitive telecommunications market were generally supportive of the Commission's efforts. However, opinions did differ on the approach being taken by the Commission to achieve the goal of reduced regulation. In this regard, the general issues raised by the parties were: whether the proposed dominant/non-dominant classification scheme can and should be adopted by the Commission; what is to be meant by the term "dominant carrier" and what carriers should be classified as dominant. The parties also commented and, in some instances, made specific recommendations on certain sections of the proposed regulations for non-dominant carrier tariff filings and certification and discontinuance applications. The parties' comments are summarized below:

A. Commission's Deregulatory Approach—Dominant/Non-Dominant Classification of Communications Common Carrier

2. AT&T comments that it is not opposed to an appropriate regulatory scheme that places increased reliance on marketplace forces. In this regard, it supports efforts for deregulation of providers of competitive service through legislation, with accompanying Consent Decree relief, which would result in a marketplace in which competitive faces and customer choice would govern. However, AT&T maintains that the approach the Commission is considering in this proceeding would foreclose potential benefits to the public by limiting to certain carriers the application of relaxed regulation as to competitive services.

3. More specifically, AT&T asserts that the proposed dominant/non-dominant classification scheme would deny it the ability to provide competitive services under reduced regulation, even though the same or substitutable services are readily available from others. It further contends that singling out the Bell System as "dominant" by virtue of its historic position in the communications marketplace or its size is contrary to the public interest. In this regard, it argues that it cannot be deprived of its ability to react promptly to market conditions. It submits that a consistent approach to reducing regulation is required if customers are to achieve the benefits of a truly competitive atmosphere and if established carriers are to be viable

competitors operating with a reasonable degree of flexibility in the marketplace and with certainty as to regulatory policies. Therefore, it recommends that the Commission adopt an approach which appropriately applies reduced regulation to all providers of competitive services in an "evenhanded" manner.

4. With respect to alleged Commission concerns of potential cross-subsidization, it maintains that these concerns can be addressed more effectively by other regulatory tools under consideration in other Commission proceedings, notably in *Market Structure Inquiry,* CC Docket No. 78–72; *Private Line Rate Structure and Volume Discount Practices,* CC Docket No. 20828; *Second Computer Inquiry,* CC Docket No. 79–246; *Uniform System of Accounts,* CC Docket No. 78–196; *Manual and Procedure for the Allocation of Costs,* CC Docket No. 79–245. AT&T further points to the low barriers to entry, resale and rapid development of cost efficient technological advances in the competitive communications marketplace to support its position against Commission implementation in this proceeding of reduced regulation on a selective basis.

5. In addition, AT&T maintains that the Commission's proposed regulatory scheme applies a double standard which provides for an uneconomic, unfair, and unlawfully discriminatory classification of carriers that is inconsistent with the statutory scheme embodied in the Communications Act. It states that nothing in Sections 201–205 of the Act suggests differing application as among carriers depending on size or so called market dominance. It asserts that silence in this regard compels the conclusion that Congress did not grant to the Commission authority to classify carriers. Even if such classification authority was granted to the Commission, AT&T maintains that this does not permit an agency to ignore the specific mandates of other sections of a regulatory statute, citing *FPC* v. *Texaco,* 417 U.S. 380 (1974). In this regard, AT&T argues that reliance on market forces or competition and on "predatory pricing" antitrust standards as substitutes for agency review ignores the specific mandates of Sections 201 and 202 which require nondiscriminatory, just and reasonable rates, regulations, practices, terms and conditions in tariffs of all carriers. Furthermore, AT&T asserts that such reliance in combination with reduced enforcement of Section 202(a) for non-dominant carriers will leave the public unprotected in matters beyond more pricing and rate levels, such as unjust, unreasonable or discriminatory rules, practices, service classifications and tariff regulations.

6. Similar opposition to the Commission's approach to reduce regulations through the proposed dominant/non-dominant classification scheme was also expressed by certain independent telephone companies. For example, USITA acknowledges that the Act establishes the classes of common carrier and connecting carrier and authorizes the Commission to classify communications services. However, it maintains that the Act quite clearly calls for non-discriminatory regulation of all carriers subject to the Commission's jurisdiction. Furthermore, USITA maintains that the dual nature of the regulation proposed under the Notice presupposes answers to questions raised in the *MTS/WATS Market Structure Inquiry,* CC Docket No. 78–72. USITA respectfully suggests that a decision on how to regulate (or deregulate) a communications market structure be deferred until the market structure itself has been determined. Although both United Telecom and Rochester argue that reduced regulation should be applied to all carriers equally, they state that they should not be classified as dominant.

7. From a somewhat different perspective, Teleprompter, a large cable television operator, maintains that the Commission's basic proposal to allocate regulatory burdens depending upon whether a carrier may be classified as dominant or competitive and non-dominant fails in important respects to reflect marketplace realities facing consumers of communications services. Teleprompter argues that the Commission has failed to appreciate that many users, such as cable systems, are dependent upon carriers which are no less dominant within their respective markets despite the relatively limited scale of their operations than the so-called dominant carriers. It asserts that exempting such carriers from providing relevant economic and financial data supporting cost-based rates is ill advised. Without such data, Teleprompter claims that it will be virtually impossible for the consuming public to determine whether tariffs comply with statutory standards.

8. In support of the Commission's approach to reduce regulation through the proposed dominant/non-dominant classification scheme are numerous other parties such as SBS, SPCC, ARINC, GTE Telenet, Tymnet, UST&T, ASC, and Plexus. Generally, these parties maintain that the classification aproach proposed by the Commission is fully authorized by the Act and is a reasonable means to achieve to the greatest possible extent, the beneficial effects of reduced regulation. They maintain that an explicit classification power, as suggested by AT&T, is not necessary because of the broad authority given to the Commission under the Act to regulate in the best interests of the public. In particular, they note: Section 4(i) of the Act which empowers the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the Act], as may be necessary in the execution of its functions", and Section 203(b) of the Act which states that "[T]he Commission may, in its discretion and for good cause shown, modify any requirement made by or under the authority of this section, either in particular instances or by general order applicable to special circumstances or conditions . . .". These parties further find support for their position in case law pertaining to the wide discretion accorded regulatory agencies in exercising their judgement on how best to fulfill their responsibilities through the adoption of flexible procedures, rules, and orders. Additionally, these parties argue that classification of common carriers for regulatory purposes on the basis of size and market position has occurred in past Commission decisions, e.g. in *AT&T Private Line Services,* CC Docket No. 18128; *Computer Inquiry,* CC Docket No. 20828; and *Resale and Shared Use,* Docket No. 20097.

9. It is further maintained by these parties that AT&T's reliance on the *FPC* v. *Texaco* decision is misplaced because the Commission is neither exempting non-dominant carriers from the requirements of the Act nor is it using marketplace forces as a substitute for its ultimate responsibilities under Title II of the Act. Rather, these parties assert, the Commission is utilizing the marketplace as a procedural tool in making initial determinations required by the Act. In fact, it is argued that the proposed regulations demonstrates that the Commission has not placed exclusive reliance on marketplace forces. These parties note that under the proposed regulations tariff filing provisions are still applicable, there is a notice period before tariffs become effective, during and after which the complaint procedure is available and the Commission retains the power to require a non-dominant carrier to provide all of the information presently required under Section 61.38 of the Rules. In short, these parties submit that the market positions of non-dominant carriers and their inability to

cross subsidize service costs justify Commission imposition of different regulatory schemes on dominant and non-dominant carriers.

10. In response to AT&T's arguments that the Commission should abandon its efforts here because other ongoing proceedings will provide more effective means to accomplish deregulation, these parties support that the principal focus of the Commission's efforts in other ongoing proceedings differs from what the Commission hopes to achieve in this proceeding. It is noted that this proceeding is largely concerned with the removal of unnecessary regulatory barriers which hinder the marketplace, while the other ongoing proceedings primarily focus on the Commission's efforts to affirmatively control the ability of monopoly-based domestic carriers engaging in anti-competitive practices. Therefore, these parties maintain the benefits to be derived from this proceeding by non-dominant carriers and subsequently by the public should not be withheld pending the resolution of other ongoing proceedings so that similar reduced regulation might take effect on all carriers.

11. Other parties support the Commission's streamlined procedures but expressed words of caution. For example, ADAPSO maintains that, although the Commission's classification of carriers as dominant or non-dominant may be useful for certain purposes, the Commission must recognize and not overlook the fact that some non-dominant carriers often have the capacity to engage in some anti-competitive activity. MCI also expresses concern over the possibility of non-dominant carriers using assets of non-communications affiliates to obtain dominance in the communications area. Thus, it urges the Commission to test its deregulatory proposals on a step-by-step basis to ensure that deregulation fosters a competitive market and does not simply pave the way for the erection of new oligopolies. The networks state that it is essential that the Commission define the terms dominant carrier and non-dominant carrier making clear the basis for determining when sufficient competition is present to warrant deregulation to protect user interests. The networks assert however that user interests could be protected if the Commission gave force and effect to marketplace contractual agreements by adopting a framework setting forth the conditions under which they would be permissible and by adopting a policy that tariff revisions inconsistent with tariff imposed contractual provisions are presumed to be unlawful.

B. Dominant/Non-Dominant Classification Standards

12. A few parties suggested a few general standards on how the Commission should determine which carriers are dominant. COWPS suggests that the Commission need not rely solely on a market share approach to determine dominance. Instead, it maintains that the Commission need consider only two crucial factors: (1) the ability of a carrier's current competitors (offering the same service or realistic substitutes) to attract customers of the carrier raises its prices, and (2) the existence of potential competitors who would enter the market if prices increase. COWPS asserts that other criteria mentioned by the Commission in its *Notice* (i.e., the firms financial resources, R & D capability, etc.) need not enter into the determination of dominance. Thus, COWPS argues that determinations of dominance ought to be made on the basis of a particular carrier in a particular market; in other words, a carrier should not necessarily be treated as dominant or non-dominant in all markets in which it provides service. In this regard, if the Commission should find a carrier with monopoly power non-dominant in a competitive market, COWPS maintains that there should be substantial separation between monopoly and competitive operations as well as non-discriminatory and arms length dealings between any separate entities. Since it believes dominant carriers will be the least cost providers of service, COWPS urges the Commission to explore ways of reducing regulatory burdens on dominant carriers competitive offerings, while ensuring against abuses of monopoly power.

13. Tymnet, like COWPS, maintains that it would be imprudent for the Commission to rely too heavily on market share in identifying dominant carriers for the purposes of the proposed rules. However, unlike COWPS, it believes that the term "dominant carrier" should only include those entities which possess the incentive and have demonstrated the willingness to engage in the sorts of unfair practices (i.e., discrimination and predatory pricing) which regulation is designed to prevent. In this regard, Tymnet asserts that one group of entities which should be deemed dominant consists of those domestic carriers and their affiliates possessing a pool of monopoly revenues, which revenues and the concomitant market power were derived from a dejure monopoly, e.g., AT&T. A second class of entities which Tymnet believes should be deemed dominant are those which, although not domestic monopoly carriers, nevertheless possess substantial market power in communication markets. Tymnet identifies two IRC's, RCA Globcom and ITT, as having that power. Although the Commission points out that predatory pricing by entities with market power but without classic monopoly revenues is not a costless strategy. Tymnet believes that predatory pricing remains an attractive and viable strategy for these firms because they possess greater financial staying power than their rivals and have a substantial prospect of recouping the losses incurred in a predatory campaign after they have driven their rivals out of business.

14. Although NTIA believes that the existence of a monopoly over a particular service is relevant to the question of whether a market is subject to effective competition, it asserts that a lack of effective competition in one market should not result in a carrier being classified as dominant. In this regard, NTIA suggests that a dominant carrier be defined as one that "furnishes telecommunications service in a substantial percentage of the total number of markets or submarkets for interexchange telecommunications services and has the ability, in a substantial percentage of those markets and submarkets in which the carrier furnishes such services, to raise prices without significantly affecting the amount of service demanded by its customers. NTIA maintains that this test ferrets out any carrier that has the ability to cause significant harm to the public or damage substantially the forces of fair competition through monopolistic practices such as cross-subsidization.

15. Rochester also objects to a definition of dominance that uses as a single criterion whether a carrier has a monopoly franchise in any one market. It argues that classification on this basis alone would not prevent predatory pricing and could, in effect, eliminate participation in the intercity market by independent telephone companies. If some dominant classification scheme is inevitable, Rochester asserts that it must be based on the magnitude of the firms share of the intercity market.

16. UST&T submits that, aside from AT&T and Western Union, presumed all specialized and/or resale carriers and other domestic carriers, such as independent telephone companies, should be presumed non-dominant subject to an *ad hoc* review by the Commission on a case-by-case basis to determine whether such carriers have achieved a position of market power.

17. SPCC suggests the need for a more certain and operational definition of dominant carrier for regulatory purposes. In part it urges the Commission to define a dominant carrier as any firm which has a market share of 40 percent or more for three consecutive years in an economically meaningful common carrier market. It concedes that the "40 percent" could be raised or lowered dependent upon general consenses of opinion so long as the parameters finally determined included AT&T. In addition, SPCC believes that it is imperative to include in any final definition of dominance a clause relating to a carrier's potential to cross subsidize between local monopoly and competitive intercity services despite overall market share. It notes that this clause would be applicable to independents such as GTE, United, and Continental, who control monopoly local exchanges, were they to enter the intercity business without setting up pure arms-length subsidaries to offer their competitor service.

18. GTE Telenet maintains that the only test the Commission needs to determine dominance is the 70 percent traffic volume test employed by the ICC. It believes that other factors relating to the question of dominance are redundant or irrelevant and unnecessarily complicate what should be a simple straight forward determination. On the other hand, AFSI maintains that a static percent of market test should not be used to determine carrier dominance because a carrier having even one service earning on excessive rate of return could use revenues from that service to compete unfairly in unregulated areas. AFSI submits that dominance, which it equates with market power, should be defined as the provision by a carrier of one or more regulated services either without effective competition, or without effective substitute services, or with an excessive rate of return. AFSI further asserts that a carrier determined to be dominant by the Commission should be ordered to offer any unregulated services through a separate subsidiary unless a clear showing is made that this is unnecessary.

19. As for Commission determinations of whether new carriers are dominant, ASC submits that Commission authorizations of transfer of control or assignment subject to conditions designed to preclude cross-subsidization of competitive services should constitute a conclusive showing that a new entity is being operated as a separate entity and as such, should be treated as non-dominant for deregulation purposes.

C. Applicability of Dominant/Non-dominant Classification Scheme

1. AT&T

20. There was substantial agreement among the parties with the Commission's conclusion in the *Notice* that AT&T should be classified as a dominant carrier and that the proposed deregulatory rules could not be applied to it at the present time.[1] These parties pointed to AT&T's massive resources, monopoly control over most local exchange facilities in the United States, near monopoly control over switched interstate services, and its overall pervasive presence in the domestic communications marketplace. As such, they generally maintained that for the Commission to achieve its objective of fostering competition AT&T must be found to be a dominant carrier and made subject to continued comprehensive regulation until there is no longer the possibility that it would cross subsidize its competitive offerings or unfairly restrict the use of its essential facilities by other carriers. In response to these parties, AT&T maintains that the arguments suppositions its classification as a dominant carrier are not based on valid economic principles, but on distorted perceptions of the marketplace which do not support a dual standard of regulation, even if such were valid as a matter of law.

2. Independent Telephone Companies and Affiliates

21. As to the Commission's proposed classification of independent telephone companies as dominant, strong opposition was expressed by USITA, United Telcom, GTE Telephone, Centel, Rochester, and NTIA. USITA, a national trade association for approximately 1,500 independent telephone companies in the U.S., finds it somewhat difficult to understand how the Commission can now conclude that independents are dominant when in fact it observed in its *Specialized Carriers,* decision, that independents would not be adversely affected by specialized carrier competition because they participate in interstate service primarily by providing local distribution facilities and not, with minor exceptions, by furnishing intercity facilities. Similarly, USITA finds it difficult to understand how connecting carriers (as described in Section 2(b)(2) of the Act) can be considered dominant for the purpose of tariff filing rules when in fact they are not required to file tariffs under Section 203 of the Act. USITA further contends that the Commission has previously concluded that concurring and connecting carriers should not be required to file tariff support data because of their relationship with and the overall dominance of the Bell System in interstate communications. 69 FCC 2d at 1167.

22. GTE Telephone maintains that so long as the Commission is charged with Title II responsibility only with respect to "interstate common carrier service, no fair and supportable decision can be made that independents should be subject to regulatory burdens as if they were companies of the Bell System. GTE Telephone points out that the Bell System dominates in the areas of tariff filings for joint interstate services, facilities plannings and the important settlements process, while independents are merely concurring carriers with no real control. In this regard, GTE submits that the Commission has reinforced Bell's dominant position with respect to FCC tariffs by taking action which as a practical matter, prevents independents from departing from Bell's tariffs through limited concurrences. GTE Telephone maintains that the Commission can achieve its stated objective without hasty and unsubstantiated conclusions treating independents as dominant in this proceeding by addressing the question of unnecessary regulation affecting independents in the context of the industry structure issues of CC Docket No. 78-72. GTE Telephone recommends language to this effect be placed in the final decision together with language indicating that independents are not foreclosed from being designated as carriers deserving of more flexible regulatory treatment.

23. United Telcom contends that monopoly over local exchange services clearly does not give independents either market power with respect to interstate services or any unique ability to cross subsidize or to act as an effective price leader. Cental makes a similar argument and further maintains that the presence of cooperation itself is not a characteristic of dominance, nor should cooperation with other carriers, both dominant and non-dominant, mean that independents take on the dominant or non-dominant qualities of those carriers. Rochester, as well as United Telecom, also argue for non-dominant classification of independents on the ground that state regulatory agencies in exercising their jurisdiction ensure against any unlawful cross subsidization or anticompetitive practices.

[1] See, *e.g.*, Comments of NTIA, SBS, Tymnet, UST&T, WU, Telenet, GTE Telenet, Graphnet, SPCC, ASC and MCI.

24. NTIA also expresses support for non-dominant classification of independents. It too points to the fact that these carriers do not possess dominant power in the interstate market at this time. NTIA believes that concerns regarding control of "bottleneck facilities" by these companies should be dealt with by requirements for non-discriminatory access and interconnection and not be imposing dominant status on these carriers without a sufficient record.

25. GTE Telenet is a common carrier providing switched data communications service. GTE Telenet objects to footnote 58 in the *Notice* which it claims suggests that GTE Telenet, as a corporate affiliate of an independent telephone company, would be regarded as a dominant carrier. It maintains that it is totally incongruous for the Commission to have found that the public interest is served through permitting certain specified relationships in the GTE-Telenet merger and only a few months later to suggest that those relationships would require GTE Telenet be denied a dominant carrier. GTE Telenet submits that underlying this problem is the Commission's totally erroneous view that the independent telephone companies achieve dominance in interstate markets merely through concurring in AT&T's interstate tariffs. It states that dominance implies the ability to establish and change rates, to decide when and where to offer new services, and to establish the conditions under which such services will be offered. In this regard, GTE Telenet maintains that the independence are totally lacking in the ability to make these decisions and to impute dominance to them is to ignore reality. Moreover, GTE Telenet claims that the fact that an independent telephone company is dominant in its local territory in the exchange telephone market—jurisdiction—does not provide a basis for imputing dominance to such carriers beyond their territories or to their affiliates.

3. Western Union

26. Western Union objects that the Commission's proposal to classify it as dominant. Western Union argues that the Commission erroneously reached a tentative conclusion to designate Western Union as dominant, because of its failure to realistically define and recognize the market in which Telex/TWX services compete. In this regard, Western Union asserts that the relevant market is the "business communications market", which it argues should include alternatives to Telex/TWX service such as Mailgram, telegram, PMS competitor services offered by SPCC and Graphnet, AT&T's MTS, WATS and private line telephone and record services (i.e., facsimiled Dataphone) and other similar competitive private line services offered by the OCCs. As such, Western Union maintains that Telex/TWX services account for an insignificant share of the "business communications market". Western Union further contends that the markets share of its Telex/TWX services will be reduced even further in the future because of increased competition from present and new service offerings. To support the above contentions, Western Union has submitted two analyses of the domestic data communications market reported by independent consulting firms.

27. Western Union further maintains that in view of direct competition from AT&T's service offerings predatory pricing to drive off all competition except AT&T would be a useless ratemaking strategy for Western Union to pursue. Additionally, Western Union objects to any characterization of it as dominant based on the argument in footnote 65 of the *Notice* that hinterland users of international telex services of the IRCs must subscribe to Western Union Telex or TWX for landline haul. This assertion, it argues, is both dated and unrealistic in view of the recent Commission decisions to permit the IRCs to unbundle their rates for hinterland users and to allow the IRCs to expand their operating rights to twenty-six gateway cities as well as their standard metropolitan statistical areas. Western Union also maintains that it would be arbitrary and capricious for the Commission to rely on what Western Union considers an erroneous understanding in paragraph 88 of the *Notice* of projected 1981 pre-tax earnings on TWX and telex services. This, it maintains, is especially true in such inflationary times. In fact, Western Union points out that it has recently projected that neither Telex nor TWX service will achieve a fair rate of return in each of the years 1979, 1980, 1981; and that the revenue deficiency will range from $43 million in 1979 to $7 million in 1981. It concludes that this earnings posture wholly contradicts the proposition that Telex and TWX are monopoly-like services which can provide Western Union with excess returns with which to cross-subsidize its other services.

28. NTIA also disagrees with the Commission's tentative decision that Western Union is a dominant carrier because of the monopolistic nature of Telex/TWX service. It maintains that Western Union clearly does not have any overall monopolistic strength which would enable it to jeopardize fair competition and cause significant harm to telecommunications ratepayers. Thus, NTIA would not consider Western Union to be a dominant carrier even if it did have an effective monopoly in one segment of the telecommunications industry. Furthermore, NTIA believes that Western Union has a monopoly over Telex/TWX only in the sense that no one else provides a service with that name. Otherwise, NTIA asserts that Western Union's Telex/TWX service is subject to effective competition.

29. Three parties noted their argument with the Commission's proposal to treat Western Union as a dominant carrier. They are UST&T, Graphnet and AFSI. Although UST&T acknowledges that the market in which Western Union operates is subject to increased competition, it asserts that the fact remains that Western Union continues to maintain a dominant position for the provision of domestic record communications services. As such, it believes that Western Union has the continued ability to utilizer its *de facto* monopoly Telex/TWX network and the revenues therefrom to engage in anti-competitive practices.

30. Graphnet asserts that the essence of Western Union's comments is an attempt to define the relevant market in such broad terms that its share of the market cannot be considered to be large enough to support a finding that is has any substantial market power. In this regard, Graphnet argues that it is intuitively obvious that non-electronic services (i.e., mail, private courier, etc.) and telephone service (including MTS, WATS, local, etc.) provide no record copy and for that reason alone cannot reasonably be considered to be interchangeable with Telex/TWX. It asserts that only services which have similar (but not necessarily identical) characteristics to Telex/TWX and are functionally interchangeable serving the same purpose at competitive prices should be considered in delineating the relevant market. As such, Graphnet submits that the relevant market is switched record communications services and notes its agreement with the Commission's conclusion in the *Notice* that Western Union market share for this type of service approaches 100 percent. With respect to Western Union's argument regarding future competition, Graphnet notes that it is not entirely clear what the precise nature of these new competitive services might be and asserts that carrier classification cannot be premised on sheer speculation as to future events

and their impact on Western Union. Finally, Graphnet asserts that Western Union's public message services cannot be overlooked in classifying Western Union as dominant. In this regard, it notes that while the Commission's new policy will now permit the develpment of PMS competition, any substantial new competition pursuant to that policy cannot be expected to develop for a number of years.

31. AFSI competes with Western Union for both truck and permit transfer business. As such, AFSI contends that Western Union must be treated as a dominant carrier because no regulatory or marketplace forces can in the immediate future prevent Western Union from cross-subsidizing non-regulated offerings with revenues from non-competitive or marginally competitive regulated services such as PMS and Telex/TWX. AFSI further maintains that the independent studies submitted by Western Union reach conclusions contrary to those claimed by Western Union and, in fact, show Western Union to be a dominant carrier. In response to AFSI, Western Union asserts that there are no significant barriers to entry into the truck permit service business. Moreover, Western Union maintains that it would hardly seek to worsen its financial position by attempting to subsidize truck permit activity out of the inadequate earnings it is making on regulated services.

4. RCA Americam

32. While the State of Alaska supports the Commission's goals and objectives, the State seeks to ensure that carriers providing services or facilities in certain telecommunications submarkets where effective competition does not exist will continue to be regulated as dominant carriers even if other services provided by the same carrier are fully competitive. Specifically, the State maintains that RCA Americam enjoys market power in its dealings with Alascom and therefore, should be accorded status as a dominant carrier. Moreover, it maintains that meaningful participation in the regulatory process by interested parties requires that the Commission continue to require filing of cost support data for all tariffs by carriers which are dominant, even for services in markets where the carrier faces competition. Without such information, it asserts that it would be difficult if not impossible to detect the existence of cross subsidy and discrimination. Finally, to ensure that the Alaska facilities market evolves toward fuller and more effective competition the state of Alaska insists that the Commission should adopt and enforce a policy requiring domestic satellite carriers seeking to occupy the prime orbital arc to provide fifty state coverage.

33. Alascom also requests the Commission to consider the impact of according non-dominant status to RCA Americam. In this regard, Alascom notes that the Commission, in its *Memorandum Opinion, Order and Authorization*, FCC 79-760, File Nos. 13-15-PSS-P-71 *et seq*, (released November 30, 1979), contemplated that tariff filings with respect to services to be acquired by Alascom from RCA Americam will be "subject to the justification requirements of our rules and applicable orders" specifically citing the filing of "cost support data". Therefore, Alascom assumes that the Commission's proposed changes in Part 61 of its Rules will make appropriate reference to the unique circumstances of Alascom's acquisition of domestic satellite facilities from RCA Americam so that Alascom will continue to have the full measure of protection offered under the Commission's rules and policies applicable to the tariff filings of dominant carriers.

34. RCA Americam maintains that it is a new carrier engaged in basically competitive services and, as such, it should not designated a dominant carrier. It notes that the problem of cross-subsidization concerns only those carriers using monopoly revenues to subsidize competitive services and submits that the State of Alaska's only interest in such matters should be to ensure that rates for service to Alascom are not too high. It indicates that the filing of cost support for services to Alascom should alleviate this concern. With respect to alleged potential rate discrimination, RCA Americam asserts that the mere filing of rates would be enough to determine whether discrimination exists.

5. Resale Carriers

35. ISACOMM is an applicant before the Commission proposing to operate as a resale entity serving specialized insurance industry telecommunications needs. ISACOMM submits that the Commission should clearly hold that resale carriers are not dominant carriers because they do not possess any market power in terms of an ability to price substantially below or above costs. It points out that a resale carrier's costs are determined and set forth in the underlying carrier's rates making a non-compensatory resale price readily indentifiable. It maintains that it would be illogical for a reseller to price its services below such costs except to reflect network efficiencies due to better loading of its customers communications traffic. On the other hand, ISACOMM asserts that if a resale carrier's prices are substantially above its costs, its customers will either find cheaper resale entity offerings or elect to deal with underlying carriers directly.

6. Video Relay Carriers

36. General agreement with the Commission's proposal to classify video relay carriers as non-dominant was expressed by such parties as Mid Kansas, United Video, Gordon & Healy, Garden State, Midwestern, NTIA, Cablcom, WTCI, and AMCI. However, these same parties disagree with the Commission's tentative conclusion, that video terrestrial microwave carriers should be regarded as dominant with respect to the delivery of network television signals to cable systems. These parties maintain that the forces of present and future competition in the video relay market extend equally to the provision of network signals. They assert that use of off the air network signals, CARS systems and satellite video relay carriers are competitive alternatives to having network signals delivered by terrestrial microwave carriers.

37. The Networks argue that the section in the proposed regulations concerned with tariff filings for the relay of network signals should be deleted because it would generate serious confusion and inconsistencies. In this regard, the Networks note the following: (1) a literal reading of the provision could require any competitive carrier—regardless of whether satellite or terrestrial technology is involved—to file Section 61.38 data for the relay of network signals; (2) the provision could apply to network signals relayed to a television station, CATV system, television translator, etc., because the rule is not confined to relays to CATV systems; (3) there is no definition of "network television signals" and it is unclear whether the rule applies to the relay of network feeds for ABC, CBS, NBC, PBS or any other network involving simultaneous transmission of programming to two or more television stations, or, alternatively, whether the rule applies only to off-the-air signals of television network affiliated stations; and (4) the provision would allow a carrier to relay an independent television station signal to a cable system without Section 61.38 data, while it would require Section 61.38 data if a network signal is later added or substituted to the relay service.

38. Gordon & Healy has also suggested an alternative proposal regarding network signals. Under this

proposal, if the rates for network television signals provided by terrestrial microwave carriers do not differ substantially from rates for non-network signals over the same or similar paths served by the carrier, the rates for network television signals would be considered presumptively lawful and no Section 61.38 data would be required. Gordon & Healy note that the Commission could specify a percentage figure from which network signal rates could not vary from non-network signal rates for the presumption of lawfulness to be applied.

39. The Commission's proposal to classify vido relay carriers as non-dominant was opposed by Teleprompter and NCTA. They maintain that it is essential that the Commission retain the present requirements for cost-based rates supported by relevant economic and financial data. In this regard, they argue that the video relay market is not competitive and is not likely to become competitive. They assert that the competitive alternative of off-air pick up of signals is as unlikely today as it was when the Commission first imposed full common carrier regulation on video relay carriers. Similarly they maintain that CARS service does not offer a competitive alternative because there are severe cost frequency congestion constraints on the cable industry's use of CARS facilities. As to the alleged competition between satellite and terrestrial carriers, these parties note that as a general rule, satellite transmission and terrestrial microwave transmission offer sufficiently different cost and operational advantages and are not usually employed to distribute the same program service to cable systems. They maintain that the only category of program service that may be distributed over both terrestrial and satellite facilities is comprised of the signals of major market independent television stations, such as WGN–TV, Chicago, and WOR–TV, New York City, as well as one "super station", WTBS–TV, Atlanta. It is further pointed out that of the six or seven satellite resale carriers authorized by the Commission, four (United Video, American Microwave, Midwestern, and Boston) are also microwave carriers authorized to offer the same distant signal over their terrestrial facilities. Finally, it is maintained that there is no effective competition because of spectrum/orbit scarcity and transponder scarcity.

40. Southern Satellite acknowledges that there is a chronic scarcity of transponder capacity with which to service cable systems. However, it argues that this does not mean that satellite resale carriers have a dominant position in the marketplace or that there is a lack of competition among terrestrial and satellite resale carriers. Southern Satellite maintains that the fact that there are only four independent signals being transmitted by satellite indicates nothing more than there is not sufficient demand for any other signals at the present time. It asserts that if there was such a demand it is evident that a proposal for carriage of new signals would have been found among the offerings proposed for transmission over RCA's ill fated Satcom III.

41. The parties also expressed their opinion on the use of population sensitive rates and retransmission charges. WTCI, Gordon & Healy, Garden State, Mid-Kansas, United Video and AMCI all agree with the Commission's proposal to allow terrestrial video carriers to utilize population sensitive rates similar to those currently utilized by the satellite carriers. These parties assert that the use of population sensitive rates will mean more efficient use of terrestrial carrier facilities and frequency spectrum, as well as a means by which terrestrial carriers may truly compete with satellite carriers.

42. On the other hand, Teleprompter, NCTA, and COWPS oppose the use of population sensitive rates until the Commission establishes some linkage between that methodology and an efficient pricing mechanism. In this regard, it is argued that the costs of terrestrial microwave service are normally distance sensitive, not population sensitive. Therefore, it is asserted that the use of such value added ratemaking methodology, instead of cost based ratemaking, is entirely inappropriate for the typical customer of a terrestrial video carrier whose demand for transmission service is highly inelastic due to its dependence upon a single carrier for television signals necessary to provide cable service.

43. The Networks and Garryowen also express the view that the Commission's analysis of video relay ratemaking methodology supporting population sensitive rates has no relevance to television broadcasting in the context of broadcaster's use of video relay signals. In this regard, the Networks note the following distinctions between CATV and broadcasting: (1) program transmission or video relay costs have not proven to be a barrier to the availability of free over the air television broadcasting services; (2) the customer is the television network; and (3) video relay costs are not passed on directly to subscribers as is the case of CATV systems.

44. WTCI takes an opposite position on the applicability of population sensitive rates to television broadcast stations. It asserts that they are applicable for the same reasons they are appropriately applicable for cable systems. WTIC points out that, as in the case of service to cable systems, shared channels are used, joint or common costs are incurred, large and small television stations are served, and the stations are licensed to cities with varying populations. Additionally, WTCI submits that the application of the same ratemaking methodology is required or, at least, desirable because the television stations receive their network signals via channels shared with cable systems in their areas.

45. Support for a change in the Commission's current policy prohibiting retransmission charges was expressed by EMI, Mid-Kansas, WTCI, Cablecom, United Video, Garden State, and AMCI. Among the arguments expressed supporting such a change were: (1) that without this capability the practical effect would be to bar implementation of population sensitive tariffs; (2) that retransmission charges are necessary to prevent the siphoning of revenues that are essential for the continued availability of the terrestrial video carriers; (3) that retransmission charges are necessary to assure that all users of the signal delivered by the video relay carrier contribute to the carriers revenue/costs and that undue discrimination does not result from two or more users or areas receiving signals for the price of one; and (4) that retransmission charges will result in greater operating efficiencies and possibly lower costs to customers because the additional revenue obtained would be spread over a broader revenue base.

46. Garryowen, on the other hand, maintains that retransmission fees are unfair because the carrier has no interest or legal right in the programming it delivers to a customer. Moreover, Garryowen argues that permitting such charges will completely eliminate the incentive for competition. However, if the Commission decides that, population sensitive rate structures are permissible for carriers serving only cable systems. Garryowen submits that a very limited retransmission charge may be appropriate to prevent abuses where a cable system requests service to a small community when in fact it intends to serve a nearby major community. It asserts that the fee should be made applicable only if

retransmission is to a larger community within a 15 mile radius. Otherwise, it contends, there would be unjust enrichment.

D. Revised Tariff Filing Regulations

47. AT&T maintains that the proposed regulations should not be adopted because they present unlawful and unreasonable procedural barriers that would effectively prevent customers, carriers, and other members of the public from exercising their rights to petition for suspension no matter how meritorous the claim. In particular, AT&T submits that there is nothing ominous, as suggested by the Commission, in competitors filing suspension petitions. As a practical matter, AT&T asserts that the public interest is served by such petitions. It notes that often times competitors are the only ones having the technical ability and the resources to promptly analyze initial filings and focus on relevant issues which, in many instances, deal with other than just rate levels. It further asserts that the Commission is not innundated by petitions to suspend and that the Commission has complete power, without adopting the proposed regulations, to deal with petitions to suspend which are dilatory in nature. AT&T additionally submits that adoption of the proposed regulations would preclude Commission review and informed decision making as mandated under the Act. In this regard, AT&T specifically objects to the proposed exemption of non-dominant carriers from all tariff support requirements. AT&T also finds that the reduced tariff notice period is inadequate for any kind of realistic evaluation of lawfulness and standards which must be met to overcome this presumption are overly restrictive.

48. USITA and Teleprompter similarly argue against the adoption of the proposed regulations. Like AT&T, these parties maintain that the adoption of these regulations will leave the public and the Commission without any basis for judging the lawfulness of tariff filings.

49. The remaining parties generally support the adoption of the proposed rules reducing the tariff filing requirements of non-dominant carriers. In brief, these parties argue as follows: that the public interest is better served without needless regulation which restricts the implementation of new and innnovative services and results in less efficient use of services and facilities and in higher costs to the customer; that the Commission can rely on marketplace forces in carrying out its duties under the Act; that marketplace forces as they exist today in the telecommunications industry remove the need for comprehensive regulation of competitive non-dominant common carriers; and that the Commission has retained regulatory safeguards in case marketplace forces do not prove sufficient. Despite this general support, some of these same parties differ in opinion on the provisions in the proposed rules pertaining to the tariff notice period and the presumption of lawfulness for non-dominant carrier tariff filings. Their comments on these matters are set forth below.

50. Although the Commission's proposal to reduce the tariff notice period to 14 days met with general approval, SPCC submits that the notice period should be shortened even further to a one day period. In this regard, SPCC submits that a maximum one-day notice period would reflect more appropriately the Commission's proposed rehance on marketplace forces to properly control the rates of competitive non-dominant carriers. It further argues that the maximum one-day notice period is sufficient because it subjects competitive non-dominant carriers to normal business conditions and risks. COWPS also believes that the Commission should further shorten the notice period. However, it submits that the Commission should wait until it has acquired experience under the proposed rules.

51. MCI, on the other hand, urges the Commission not to further shorten the proposed 14 day notice period. It believes that 14 days is the minimal amount of time necessary for affected carriers or customers to learn of the filing and, if necessary, to react to it. It further endorses that portion of the rules which requires a carrier to be prepared to submit necessary tariff information or data within 7 days (or a longer period established by the Commission's staff) from the date of request.

52. On the other hand, AT&T and Com-Net argue that the 14 day tariff notice period is too short. AT&T suggests that a notice period of at least 30 days, extendable up to 90 days for good cause, would better serve the public interest. Com-Net asserts that a minimum 60 day notice period is required when an underlying sharer or reseller is affected. Without a longer notice period, Com-Net maintains that a reseller or sharer would not have sufficient time to adjust costs that must be passed through to the ultimate users.

53. Aside from the actual length of a reduced notice period, Plexus has expressed its concern over the unilateral ability of a carrier, even a competitive carrier, to increase or change rate structures where no readily available alternative exists to which a user could change (within, for example, a shortened notice period of 14 days) to avoid the increase. Plexus suggests that one possibility to avoid such results would be to allow carriers to enter into agreements with customers not to change tariffs on less than a particular period of notice longer than the 14-day period, which agreement would be binding despite the 14-day notice period provided in the rules.

54. Finally, SPCC submits that the Commission should clarify the 14-day notice period provisions by specifying both the amount of time that a filing carrier will have to respond in opposition to rejection or suspension petitions and the amount of time the Commission staff will have to examine the issue of a tariff's lawfulness. In this regard, SPCC suggests that a protestant should be given seven days to file a petition and the filing carrier three to four days to respond.

55. With respect to the proposed presumption of lawfulness for non-dominant carrier tariff filing, the majority of the parties support its adoption in the belief that it will discourage spurious petitions to suspend or reject. However, ARINC and SIAC maintain that the application of the presumption of lawfulness should be restricted to tariff filings that do not involve rate increases. They submit that Section 204(a) of the Act explicitly places the burden of proof on the carrier seeking a rate increase and, therefore, the Commission is without authority either to reassign or to alter this burden in any manner. Furthermore, they assert that in the face of effective price leadership by a single dominant carrier competition alone is not sufficient to guarantee that rate increases are, in fact, cost-based. They maintain that the Commission must acknowledge the possibility non-dominant carriers will price their services above average costs, but below the prices set by the established price leader, such that rate increases will yield supracompetitive returns in contravention of the statutory mandate that all rates be just and reasonable. SPCC disagrees with ARINC and SIAC. It argues that there would be no change in the current allocation of the burden of proof violative of Section 204(a) of the Act. It maintains that a competitive carrier's burden of proof would be triggered under Section 204(a), as it is now, only after a petitioner has made an initial showing that a proposed rate increase may be unlawful. It notes that the only difference now are the

standards by which the Commission shall judge the petitioner's showing. It further asserts that these standards are warranted because experience demonstrates that the non-dominant carriers are not susceptible to imposing unlawful rates in a competitive environment.

56. One other party expressing concern over the proposed presumption of lawfulness was Com Net. It argued that the standards under which a user might overcome the presumption of lawfulness are so difficult that there is the potential for substantial disruption to customers. In this regard, it points out that changing over from one carrier to another carrier is at best a difficult process and maintains that the Commission reliance on the complaint and investigation procedure to police carriers is misplaced.

E. Reporting Requirements for Non-Dominant Carriers

57. The following comments were made with respect to the Commission's proposed reporting requirements for non-dominant carriers.

58. SPCC and SBS would not be opposed to filing, on a total company basis, the information requested in Appendix D of the *Notice,* nor would it object to providing annual gross revenue by service for comparative purposes. However, it feels that requiring financial information on a service by service basis as proposed in the revised financial reporting requirement is not only unnecessary for a non-dominant carrier but is also not currently available, at least to SPCC. Overall, SPCC believes that the desire for additional data appears fundamentally contradictory to the very essence of the Commission's deregulatory approach.

59. Similarly, Graphnet submits that it is inappropriate for the Commission to introduce new reporting requirements at a time when the Commission is seeking to reduce unnecessary regulatory constraints. Graphnet maintains that the imposition of this requirement would be most burdensome on resale carriers who have never been subject to any formal reporting requirements. Furthermore, Graphnet points out that the use of rate of return regulation for which the Commission would be seeking to "obtain precise information regarding carrier rates of return" through the reporting requirement is not appropriate for resale carriers who lease, but do not own, transmission facilities. As such, Graphnet submits there would be little in the way of a rate base for a resale carrier and, therefore, no reason for the Commission to apply rate base regulatory principles.

60. Finally, UST&T disputes the Commission's conclusion that the reporting requirement is primarily an updating and modification of existing reports now required of most competitive carriers. It submits that the reporting requirement would place an additional and unnecessary burden, both developmentally and operationally upon the non-dominant carriers. To comply with this requirement UST&T notes that it would have to expend substantial amounts of manpower and capital to redesign their accounting and reporting systems. UST&T maintains that the Commission should rely upon the more efficient and less costly competitive marketplace forces.

F. Section 214 Proposals

61. Parties commenting on Section 214 proposals set forth in the *Notice* recognized that Commission reexamination of Part 63 of the Commission's Rules is timely. The streamlining of Section 214 regulation was generally applauded.[2] Certain parties stated that existing Part 63 rules were not intended for competitive carriers without an incentive to overinvest but to ensure against overbuilding by monopoly carriers.[3] Many parties advocating blanket certification of OCCs under Section 214 noted that existing requirements can be a substantial regulatory burden and can delay service commencement.[4] Both the Council of Wage and Price Stability and Southern Satellite argued that regulation of other common carriers (OCCs) may also have an inhibiting effect on innovation of services and efficient pricing. While AT&T supported the Commission's plan to reduce the scope and complexity of carrier information filings, it advocated the applicability of streamlined Section 214 regulation to all carriers in an "even-handed" fashion.[5]

62. Parties commenting on the subject generally agreed that easing Section 214 regulation of OCCs was within the Commission's authority.[6] According to certain parties the Communications Act does not specify the amount of information required for Section 214 certification and service discontinuance authority and also does not require agency review of individual Section 214 applications.[7] Parties commented that methods of making public interest findings are within the Commission's discretion and that the Commission can rely on competitive forces when such reliance is in the public interest.[8] SPCC pointed out that Part 63, Sections 63.01 and 63.03 already require less comprehensive information for smaller channel additions than major new construction.

63. In their comments, Alascom and USITA questioned whether the Commission has legal authority to implement streamlined Section 214 regulation, contending that both Section 214(a) and 309 of the Act mandate a particularized public interest finding. In addition, comments by Alascom, the State of Alaska and RCA Americom addressed the narrower issue of whether a special public interest finding under Section 214 is necessary prior to certification or discontinuation of Alaska service. Alascom espoused the position that the Commission's policy encouraging competition should not be applied to Alaska without a finding that Alaska, in its unique position, ought to be served by other than Alascom. In its comments the State of Alaska sought assurance the RCA Americom and any other carrier providing satellite services to Alaska would be subject to traditional Section 214 requirements concerning discontinuation of service. RCA Americom did not oppose the State of Alaska to the extent that it would have RCA Americom seek Section 214 authorization before discontinuing service to Alascom, Inc.

64. The parties disagreed about whether the Communications Act gives the Commission power to follow different procedures in its Section 214 regulation of dissimilarly situated carriers. A few stated that the proposed bifurcated regulatory scheme is within the Commission's authority.[9] AT&T and USITA took the contrary position. In its comments AT&T characterized the Commission's Section 214 proposals as "regulatory handicapping", in contravention of legal precedent and regulatory policy.

65. Certification under draft rule Section 63.07 was by "cities or geographic area where service is to be offered". Several parties commented on the appropriate definition of a

[2] See, e.g., comments of ABS, CBS and NBC, ARINC, ASC, AT&T, Council on Wage and Price Stability, CNS, Gordon & Healy, Graphnet, GTE, MCI, Plexus, SBS, SIAC, SPCC, Southern Satellite, Tymnet, UST&T.

[3] See, e.g., comments of ARINC SIAC and Tymnet.

[4] See, e.g., comments of ASC, Southern Satellite, United Video and UST&T.

[5] USITA in its comments and reply comments echoed AT&T's argument for uniform Section 214 regulation.

[6] See, e.g., comments or reply comments of ARINC, AT&T, Comnet, SBS, SPCC, and Southern Satellite.

[7] See comments of ARINC and SBS.

[8] See, e.g., comments of ARINC, Comnet and Southern Satellite.

[9] See, e.g., comments of ADAPSO, ARINC, SES and SPCC.

geographic area under this proposal. ASC and GTE contended that a blanket authority proposal will only be a significant improvement over existing certification provisions if geographic areas are broadly defined. ASC recommended that its own geographic area be made coextensive with its available market, the forty-eight states and Hawaii. SBS urged that the Commission not specify criteria for the size of the geographic service area but that a carrier proposing to use radio facilities be allowed to request a service area as large as the area illuminated by the radiation pattern for which it obtains Title III authority. GTE advanced the position that any definition of an authorized service area should allow a non-dominant carrier to receive authorization for service of the entire United States. USITA, in its comments, argued that the concept of a geographic service area abdicated from both the Section 214(a) definition of line and from the need to regulate the rate base.

66. The law firm of Gordon & Healy, submitting comments on behalf of its video relay common carrier clients, and Southern Satellite both indicated their confusion about whether the Commission intended to except all video relay circuits from proposed rule Section 63.07. Gordon & Healy endorsed the exclusion of only satellite circuits from relaxed certification requirements. Southern Satellite argued that the *Notice* provided no policy reason preventing the extension of all contemplated Section 214 modifications to satellite carriers.

67. Comments generally favored proposals for eased reporting of circuit additions and for a streamlined process by which previously certified carriers can apply for authority to add new service areas and to construct cable more than 10 miles long. However, several parties commented that requiring reports to the Commission of circuit additions every 30 days as proposed in rule Subsection 63.07(c) was unnecessarily burdensome; the Commission could monitor market dynamics with less frequent and possibly less detailed facilities reporting requirements.[10] AT&T commented that all carriers should be permitted to channelize without further Section 214 authorization because a carrier's system should not be certified in the first instance unless full use of such a facility is in the public interest. Plexus recommended that draft rule Subsection 63.07(d) be amended to provide for automatic authorization of additional service areas or facilities after 14 or 21 days on public notice as is already permitted under Section 63.03 of the rules. Comments such as those by Plexus and SPCC recommended granting unlimited expansion rights to a carrier with its initial authorization to serve a particular geographic area.

68. Those parties commenting on the subject generally favored the Commission's proposed streamlined procedures for discontinuance, reduction or impairment of service by non-dominant domestic carriers.[11] The COWPS noted that eased exit procedures would encourage entry into high risk markets. Tymnet commented that the procedures set forth were consistent with the public interest because either substitutes would be available or exit could be delayed or prohibited if substitute services were unavailable. Focusing on legislative history, SBS stated that Section 214's discontinuance procedures were added in 1943 to minimize service disruptions resulting from the merger of Postal Telegraph and Western Union. SBS contended that since these discontinuance provisions were developed in the context of a monopolized market, they had little relevance to OCCs.

69. Parties objecting to the notice/exit procedures set forth in draft Section 63.71 generally complained either that they do not apply evenhandedly or that the burden of proving no available alternative service had not been properly allocated.[12] AT&T took the position that the opportunity to exit freely should be afforded to whichever carrier in a competitive market chose to exit first until only one carrier remained in place. A few parties stated that the carrier seeking to discontinue service should first be required to make a showing that a reasonable substitute service was available. Plexus suggested that if customers of a competitive carrier can make a prima facie showing of no available reasonable alternate service, the burden of demonstrating that the proposed discontinuance serves the public interest should shift to the carrier. SPCC, in contrast, urged that termination authority be automatically granted unless the party protesting discontinuance was able to satisfy the same criteria proposed by the Commission for suspension of OCC tariff filings.

70. The draft service discontinuance proposal for OCCs provided that an application for discontinuance would be automatically granted on the thirty-first day following the filing of an application to discontinue service unless the Commission staff notified the carrier to the contrary. Although most parties commenting endorsed this proposal as set forth in the Notice, a few did not. SIAC recommended a 90 day notice period, averring that frequently a thirty day period does not allow users sufficient time to locate and implement alternative communications service. COMNET stated that underlying customers of a sharer or reseller are particularly disrupted by a service discontinuance since presently tariff BSOC No. 6 and contractual relationships protect arrangements between first level resellers.

COMNET suggested that the rule be rewritten to state that where the offered service is shared or resold, 60 day notice be required to discontinue service.

71. Finally, several parties raised the issue of whether resellers should be subject to Section 214 regulation through certification, notice or discontinuance notice procedures. ISACOMM, for example, commented that requiring resale carriers to obtain Section 214 authority to expand or reduce service points resulted in unnecessary regulatory burdens because underlying carriers would have to obtain Section 214 authorizations for facilities involved anyway. According to ISACOMM, since the Commission had decided in its *Resale and Shared Use* decision to allow open entry into the resale services market, Section 214 no longer serves as a screening mechanism regulating entry of new resale competitors; in the case of resellers, Section 214 regulation is duplicative with regard to the other three reasons for Section 214 regulation stated in the *Notice*, UST&T suggested that resellers merely notify the Commission of their activities. Taking the contrary position, AT&T and MCI stated that resellers should be subject to Section 214 regulation.

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[10] See, e.g., comments of AT&T, GTE, IAACOMM, SBS AND SPCC.

[11] See, e.g., comments of Council on Wage and Price Stability, GTE, ISACOMM, MCI, SBS and Tymnet.

[12] See, comments of AT&T and SIAC.

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47 CFR Part 76

[Docket No. 20508; FCC 80-608]

Cable Television Channel Capacity and Access Channel Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule (final order).

SUMMARY: In 1976, the FCC adopted rules requiring 3500 subscriber or larger cable television systems to have 20

channel and two-way capacity and set aside certain channels for use by specified groups and by the public. The rules were found to exceed the FCC's authority by the Supreme Court. This *Order* deletes these rules in accordance with the Supreme Court's decision and discusses how certain remaining rules will be applied to programming distributed on cable television access channels.

DATE: Effective: November 10, 1980.

ADDRESS: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: William H. Johnson, Cable Television Bureau, (202) 632-6468.

In the matter of Amendment of Part 76 of the Commission's rules and regulations concerning the cable television channel capacity and access channel requirements of § 76.251 (Docket No. 20508).

Order

Adopted: October 21, 1980; Released: November 4, 1980.

By the Commission: Commissioner Washburn concurring and issuing a statement.

1. In its *Report and Order in Docket 20508,* 59 FCC 2d 294, 41 FR 20665 (1976), the Commission adopted amendments to what have come to be known as the cable television access channel rules. These rules generally required that cable television systems with 3500 or more subscribers have a technical capacity for nonvoice return communications, twenty channels of potential capacity, and provide, within the limits of channel capacity and as required by the demand therefore, certain specified channel space for use by the public, local educational and governmental authorities and for lease on a commercial basis.

2. In the case of *Midwest Video Corp.* v. *FCC,* 571 F. 2d 1024 (8th Cir. 1978) these rules (47 CFR §§ 76.252-258) were found to exceed the jurisdiction of the Commission. This view was affirmed by the Supreme Court in *FFC* v. *Midwest Video Corp.* 440 U.S. 689 (1979). In compliance with these decisions we are hereby deleting the cable television two way capacity, channel capacity, and access channel requirements from the rules.

3. In deleting these rules, we have maintained the distinction between programming on access type channels, whether provided voluntarily, or pursuant to state or local law, and programming subject to the system operator's editorial control. The specific requirements of the fairness doctrine (§ 76.205) and equal opportunities for political candidates rules (§ 76.209) will, as in the past, not be applied to access type programming, as long as the channels on which such programming is presented themselves have inherent in their functioning, access of a type which makes possible equal opportunities for political candidates and time for the provision of programming covering all sides of controversial issues of public importance. For the time being we believe it appropriate to leave for case-by-case development more detailed definitions of what types of channels will meet this requirement. We believe this treatment will comply with the statutory requirement of Section 315 of the Communications Act of 1934, as amended, in its application to "community antenna television system[s]." 47 U.S.C. § 315. The other specific content control rules pertaining to lotteries (§ 76.213), obscenity (§ 76.215), and sponsorship identification (§ 76.221) we will continue to apply only to programming which is subject to system operator editorial control.[1] We recognize that further consideration will have to be given to the delineation of the proper boundaries and appropriate policies to be followed in this area as a consequence of the elimination of the access channel rules. That, however, seem to us best undertaken in a separate proceeding, perhaps after the accumulation of some experience with the situation as it now exists.

4. Because the action taken herein is purely ministerial, conforming the written rules to the court's mandate and consistent with the Communications Act, 47 U.S.C. § 402(h) and the Administrative Procedure Act, 5 U.S.C. § 553, the prior notice and publication requirements of the Administrative Procedure Act are inapplicable.

Accordingly, it is ordered, that effective November 10, 1980, Part 76 of the Commission's Rules and Regulations is amended as set forth in the attached appendix.

Federal Communications Commission [2]
William J. Tricarico,
Secretary.

[1] With the changes announced herein, we believe the remanded proceeding in *American Civil Liberties Union* v. *FCC,* Case No. 76-1695 (C.A.D.C.), involving the Commission's *Clarification,* 59 FCC 2d 984 (1976) and the application of obscenity and indecency rules to access programming through the cable system operator, is now moot.

Appendix

Part 76 of Chapter 1 of the Code of Federal Regulations is amended as follows:

§ 76.5 [Amended]

1. In § 76.5, paragraph (x) is deleted.

§ 76.205 [Amended]

2. In § 76.205, paragraph (a), is amended by deleting the word "origination" and substituting the word "cablecasting."

§§ 76.252-76.258 [Deleted]

3. Sections 76.252-258 are deleted.

§ 76.305 [Amended]

4. In § 76.305(a)(7) the phrase "§ 76.256(d) (operating rules for access channels);" is deleted.

§ 76.305 [Amended]

5. In § 76.305(c) the reference to "§ 76.256(d)," is deleted.

Concurring Statement of Commissioner Abbott Washburn

Re: Access Channel Rules.

October 21, 1980.

It is basically inconsistent to hold the cable-TV operator (in his local-origination programs) to content control rules when exercising editorial control, and not to have similar standards for the access channel programmers. This item, I agree, was not the place to try to resolve this double standard, given the practical problems presented by the different varieties of access programming and the sensitive First Amendment problems involved. Nevertheless, it would have been useful to have alerted those who use access channels that they are not totally without responsibilities in these areas. Instead we have skirted the problem by saying we will handle it in the future on case-by-case analysis.

[FR Doc. 80-35064 Filed 11-17-80; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 81

Stations on Land in the Maritime Services and Alaska—Public Fixed Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action amends several sections of the Commission's rules on Stations on Land in the Maritime Services and Alaska—Public Fixed Stations to delete obsolete dates and

[2] See attached statement of Commissioner Washburn.

associated language. These dates have since passed and have no present or future utility. This action is being taken to bring the rules up to date.

EFFECTIVE DATE: November 14, 1980.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jorge F. Camacho, Private Radio Bureau (202) 632-7175.

SUPPLEMENTARY INFORMATION:

In the matter of editorial amendment of §§ 81.140, 81.142, 81.304, 81.306, 81.308, 81.360, 81.361, and 81.708 of the Commission's rules.

Adopted: October 30, 1980.

Released: November 7, 1980.

1. We are editorially amending a number of sections of Part 81 of the Commission's rules to delete obsolete dates and associated language. These dates have since passed and have no present or future utility or effect. The affected sections are 81.140, 81.142, 81.304, 81.306, 81.308, 81.360, 81.361, and 81.708.

2. Authority for this action is contained in sections 4(i), and 303(r) of the Communications Act of 1934, as amended, and Section 0.231(d) of the Commission's rules. Since the amendment is editorial in nature, the public notice, procedure and effective date provisions of 5 U.S.C. 553 do not apply.

3. Regarding questions on matter covered in this document contact Jorge Camacho, telephone (202) 632-7175.

4. In view of the above, it is ordered, That the rule amendments set forth in the attached Appendix is adopted effective November 14, 1980.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

R. D. Lichtwardt,

Executive Director.

Appendix

Part 81 of Title 47 of the Code of Federal Regulations is amended to read as follows:

Part 81 Stations on Land in the Maritime Services and Alaska—Public Fixed Stations.

1. In Section 81.140, the introductory clauses in paragraphs (a) (1) and (2) are revised as follows:

§ 81.140 Emission limitations.

(a) * * *

(1) When using emissions other than A3A, A3H or A3J:

* * * * *

(2) When using emissions A3A, A3H or A3J:

* * * * *

2. In Section 81.142, paragraph (d) is revoked and reserved to read as follows:

§ 81.142 Modulation requirements.

* * * * *

(d) [Reserved]

* * * * *

3. In Section 81.304, the table in paragraph (a) is revised; paragraphs (b) (11), (21), (27), and (44) are revised; paragraphs (b) (12), (13), (17), (23), (30)–(43), (45), (46), (53), (54), (56), and (58) are removed and reserved; paragraph (c) is revised; the introductory clause of paragraph (f) is revised; and paragraph (h)(2)(i) is removed and reserved as follows:

§ 81.304 Frequencies available.

(a) * * *

Carrier frequency (kHz)	Conditions of use	
	Section	Limitations
1619	81.307	11,29,50
1622	81.307	11,29,50
1643	81.308	11,29
1646	81.308	11,29
1649	81.308	11,29
1652	81.308	11,29
1705	81.308	11,29
1709	81.308	11,29
1712	81.308	11,29
2003	81.308	11,29,52
2006	81.308	11,29,52
2086	81.306(c)	3,21
2115	81.308	11,29
2118	81.308	11,29
2182	81.191, 81.305	1,29,44,46
2309	81.306(d)	11,29
2312	81.306(d)	11,29
2379	81.307	11,29
2382	81.307	11,29,50
2397	81.306(d)	11,29
2400	81.306(c)	11,29
2400	81.306(d)	23
2419	81.308	11,29
2422	81.308	11,29
2427	81.308	11,29
2430	81.308	11,29,59
2442	81.306(b)	23
2447	81.308	11,29
2450	81.308	11,29
2450	81.306(b)	23
2466	81.306(b)	23
2479	81.308	11,29
2482	81.308	11,29,54,59
2482	81.306(b)	23
2490	81.306(b)	23
2506	81.308	11,29,55
2506	81.306(a)(b)	23
2509	81.308	11,29
2512	81.308	11,29
2514	81.306(b)	2,23
2522	81.306(b)	23
2530	81.306(a)(b)	23
2535	81.308	11,29
2538	81.308	11,29
2538	81.306(b)	23
2550	81.306(b)	2,23
2558	81.306(b)	23
2563	81.308	11,29
2566	81.308	11,29
2566	81.306(b)	23
2572	81.306(b)	23
2582	81.306(b)	2,23
2585	81.306(b)	21
2590	81.306(a)(b)	23
2598	81.306(b)	23
2616	81.308	11,23,29,52
2638	81.306(b)	8,23
2738	81.306(c)	23
2782	81.306(c)	23
2784	81.306(c)	23
3258	81.308	11,29,52
3261	81.308	11,29
4069.2	81.306(c)	3,5,11,57
4072.4	81.306(c)	5
4088.4	81.306(c)	3,5,11
4367.8	81.006(c)	3,5,11
4371.0	81.306(a)(b)(c)	5,11
4380.6	81.307	27,29,51,61
4383.8	81.307	9,11,29,51,61
4387.0	81.306(c)	3,5,27
4390.2	81.306(a)(b)	11
4399.8	81.306(a)(b)	11
4399.8	81.308	27,29,61
4403.0	81.306(a)(b)	11
4403.0	81.308	11,29,61
4412.6	81.306(b)	11
4415.8	81.306(a)(b)	11
4419.0	81.306(a)	11
4422.2	81.306(a)	11
4425.4	81.306(a)	11
4425.4	81.308	27,29,61
4428.6	81.306(a)	11
4428.6	81.308	11,29,61
6147.5	81.306(c)	3,5,11
6200.8	81.306(c)	5,27
6451.9	81.306(c)	3,4,5,11
6455.0	81.306(c)	3,4,5,11
8207.6	81.306(c)	3,4,11
8210.8	81.306(c)	3,4,11
8246.0	81.306(c)	3,5,27
8735.2	81.306(a)	11
8738.4	81.306(a)	11
8748.0	81.306(a)	11
8751.2	81.306(a)	11
8754.4	81.306(a)	11
8757.6	81.306(a)	11
8773.6	81.306(a)	11
8776.8	81.306(a)	11
8780.0	81.306(c)	3,5,27
8783.2	81.306(b)	11
8792.8	81.306(a)	11
8796.0	81.306(a)	11
8805.6	81.306(a)	3,5,27
8808.8	81.306(a)	11,47
12379.0	81.306(c)	3,5,27
13137.0	81.306(a)	12
13140.5	81.306(a)	11
13151.0	81.306(a)	11
13154.5	81.306(a)	11
13158.0	81.306(c)	3,5,27
13161.5	81.306(a)	11
13172.0	81.306(a)	11
13175.5	81.306(a)	11
13186.0	81.306(a)	11
13193.0	81.306(a)	47
16488.0	81.306(c)	3,5,11
17269.0	81.306(a)	11
17272.5	81.306(a)	11
17283.0	81.306(c)	3,5,27
17286.5	81.306(a)	11
17304.0	81.306(a)	11
17307.5	81.306(a)	11
17318.0	81.306(a)	11
17321.5	81.306(a)	11
17325.0	81.306(a)	11
17339.0	81.306(a)	11
22625.5	81.306(a)	11
22653.5	81.306(a)	11
22657.0	81.306(a)	11
22667.5	81.306(a)	11
22671.0	81.306(a)	11
22688.5	81.306(a)	11
22692.0	81.306(a)	11
22706.0	81.306(a)	11
22713.0	81.306(a)	11
MHz		
156.750	81.304	20
156.800	81.304	25
161.800	81.304	6,22,63
161.825	81.304	6,22,24,63
161.850	81.304	6,22,24
161.875	81.304	6,22,24,63
161.900	81.304	6,22
161.925	81.304	6,22,63
161.950	81.304	6,22
161.975	81.304	6,22,63
162.000	81.304	6,22
162.025	81.304	22,62

(b) * * *

(11) Emission 2.8A3J.

(12) [Reserved]
(13) [Reserved]
* * * * *
(17) [Reserved]
* * * * *
(21) Limited to a maximum output power of 150 watts (PEP) and to emission 2.8A3J.
* * * * *
(23) [Reserved]
* * * * *
(27) For use with emission 2.8A3J, with coast and ship stations operating (simplex) on the same frequency.
* * * * *
(30) Through (43) [Reserved]
(44) Available for use with emissions 2.8A3H and 2.8A3J.
(45) [Reserved]
(46) [Reserved]
* * * * *
(53) [Reserved]
(54) [Reserved]
* * * * *
(56) [Reserved]
* * * * *
(58) [Reserved]
* * * * *
(c) Except as provided in Sections 81.142(d) and 81.191(c)(1), public coast stations are required to have the capability to use emissions 2.8A3H and 2.8A3J on the frequency 2182 kHz and the capability to use emission 2.8A3J on all other frequencies.
* * * * *
(f) Except for safety communications:
* * * * *
(h)(2)(i) [Reserved]
* * * * *

4. In Section 81.306(b), note 1 following footnote 1 of the table is revised, and tables in paragraphs (c) and (d) are revised to read as follows:

§ 81.306 Frequencies available below 27.5 MHz.

* * * * *
(b) * * *
1 * * *
Note.—
1: Frequencies above 2850 kHz are available for 2.8A3J emission.
2: * * *
* * * * *
(c) * * *

Coast station location	Frequency (kHz)
Baltimore, Md	2400.0
Louisville, Ky	2086.0
	2782.0
	4069.2
	6455.0
	8780.0
	13,158.0
	17,283.0
Memphis, Tenn	2086.0
	2782.0
	4068.4
	6200.8
	8246.0
	12,379.0
	16,488.0
Pittsburgh, Pa	2086.0
	2782.0
	4367.0
	6451.9
	8207.5
	12,379.0
	16,488.0
St. Louis, Mo	2086.0
	2782.0
	4367.5
	6147.5
	8210.8
	13,158.0
	17,283.0
Lake Dallas-Lake Texhoma, Tex	2738.0
Lake Mead, Nev	2782.0
The Dalles Umatilla, Oreg	2784.0

(d) * * *

For communication with common carrier coast stations located in the vicinity of—	Common carrier coast station carrier frequency (kHz) [1]	Associated ship station transmitting carrier frequency (kHz) [1]
Cold Bay, Alaska	2,312	2,134
Cordova, Alaska	2,397	2,237
Juneau, Alaska	2,400	2,240
Ketchikan, Alaska	2,397	2,237
Kodiak, Alaska	2,309	2,131
Nome, Alaska	2,400	2,240
Sitka, Alaska	2,312	2,134

[1] Subject to the limitations and conditions of use set forth in 81.304.

* * * * *

5. In Section 81.308, paragraph (a) and table 1 is revised and table 2 with footnotes is deleted. As amended paragraph (a) reads as follows:

§ 81.308 Frequencies available in one or more zones of the Alaska area.

(a) Each of the carrier frequencies set forth in the following table, when authorized by station license, may be used by public coast stations, other than common carrier, employing radiotelephony. Frequencies designated for use in a zone of the Alaska area are available only to coast stations located in that zone. The limitations and conditions of use applicable to each frequency are set forth in 81.304. The frequencies available and the zones in the Alaska area in which they may be employed are set forth in the following table:

Table 1

Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
1646			1643		1646
	1649			1652	
		1705	1705		
1709				1712	
2006				2003	
	2115		2118		

Table 1—Continued

Zone 1	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6
2419		2422			
	2430		2427	2430	
		2450	2447		2450
		2473	2482		2482
				2506	2506
2512	2509	2512	2509		
	2538	2535			
2566			2563	2566	
2616					
3261			3261	3258	
4403.0		4399.8			4403.0
	4428.6		4425.4	4428.6	

6. In Section 81.360, paragraph (a) is revised and (c) is removed and reserved as follows:

§ 81.360 Frequencies available below 4000 kHz.

(a) Assignment to limited coast stations of radiotelephony frequencies in the band 2000–2850 kHz will be subject to the following schedule and limitations;
(1) The capability to use emission 2.8A3J is required.
(2) On 2182 kHz, limited coast stations are required to have the capability to receive A3J emission.
(3) Radiotelephony frequencies in the band 2000–2850 kHz will be available only to limited coast stations where the licensee, in addition to providing service on the frequencies in the band 2000–2850 kHz shall apply for and if authorized provide service on frequencies in the band 156–162 MHz.
(4) Except for safety communications:
(i) Radiotelephony frequencies in the band 2000–2850 kHz shall not be used by a limited coast station for communication with a vessel which is within the VHF service range of that limited coast station.
(ii) Except in the Mississippi River System and Great Lakes, limited coast stations serving lakes or rivers will not be authorized to employ frequencies in the band 2000–2850 kHz.
* * * * *
(c) [Reserved]
* * * * *

7. In Section 81.361, the left hand column of the table and footnotes in paragraph (a) are removed. As amended, paragraph (a) reads as follows:

§ 81.361 Frequencies available.

(a) The following carrier frequencies may be authorized to limited coast stations for business and operational communications with ship stations operating on the same carrier frequency. The conditions of use are set forth in paragraph (b) of this section.

Carrier frequency (kHz)		
2065.0	6521.9	16593.3
2079.0	8291.1	22124.0
2096.5	8294.2	22127.1
4125.0	12429.2	22130.2
4143.6	12432.3	22133.3
4419.4	12435.4	22136.4
6218.6	16587.1	
6221.6	16590.2	

* * * * *

8. In Section 81.708, the table in paragraph (a) is revised and paragraph (b) is amended by removing and reserving (7), (8), (11), (12), (14), (15), (16), (41), and (45) and by revising (10), (20)(ii) and (40) to read as follows:

§ 81.708 Frequencies available.

(a) * * *

Carrier frequency (kHz)	Conditions of Use	
	Section	Limitations
149.6	81.709	13
1643	81.710	10
1646	81.710	10
1649	81.710	10
1652	81.710	10
1657	81.710	10
1660	81.710	10, 21
1705	81.710	10
1709	81.710	10
1712	81.710	10
2003	81.710	10, 22
2006	81.710	23
2115	81.709	10, 23, 24
2118	81.709	10
2253	81.711, 81.713	10
2256	81.711, 81.713	10, 33
2312	81.712, 81.713	44
2400	81.712, 81.713	44
2419	81.710	10
2422	81.710	10
2427	81.710	24
2430	81.710	10, 24, 30
2447	81.710	10
2450	81.710	10, 24
2463	81.711, 81.713	10, 34, 43
2466	81.711, 81.713	10, 34, 43
2471	81.711, 81.713	10, 35, 43
2474	81.711, 81.713	20, 43
2479	81.710	24, 30
2482	81.710	10, 24, 30
2506	81.710	10, 27
2509	81.710	10
2512	81.710	10
2535	81.710	24
2538	81.710	10, 24
2563	81.713	10
2566	81.710	7, 10, 24
2601	81.712, 81.713	10
2604	81.712, 81.713	10
2616	81.710	10, 24
2629	81.711, 81.713	10, 36, 43
2632	81.711, 81.713	10, 37
2691	81.711, 81.713	10, 32
2694	81.711, 81.713	10, 38
2773	81.711	10
2776	81.711, 81.713	10
2781	81.712, 81.713	10
2784	81.712, 81.713	10
3164.5	81.712, 81.713	10
3167.5	81.712, 81.713	10
3180	81.712, 81.713	10
3183	81.712, 81.713	10
3198	81.709	17
3201	81.709	17
3238	81.712, 81.713	10
3241	81.712, 81.713	10
3258	81.710	29
3261	81.710	10, 29
3303	81.712, 81.713	10
3354	81.712, 81.713	10, 39
3357	81.712, 81.713	10, 39
3362	81.712, 81.713	10, 40
3365	81.712, 81.713	10, 40
4035	81.712, 81.713	10
4791.5	81.710	20
5134.5	81.711, 81.713	10, 40, 43
5137.5	81.711, 81.713	10, 43
5164.5	81.709	18
5167.5	81.709	18
5204.5	81.711, 81.713	10, 42, 43
5207.5	81.711, 81.713	10, 42, 43
5370	81.712, 81.713	10
6948.5	81.710	20
7368.5	81.710	20
8067	81.709	19
8070	81.709	19
11,437.0	81.710	20
81,601.5	81.710	20

(b) * * *

* * * * *

(7) [Reserved]

(8) [Reserved]

(9) * * *

(10) Available for use with emission 2:8A3J.

(11) [Reserved]

(12) [Reserved]

(13) * * *

(14) [Reserved]

(15) [Reserved]

(16) [Reserved]

(20) * * *

(ii) When employing radiotelephony, emission 2.8A3J shall be used. For radiotelegraphy, emission 0.3F1 shall be used.

* * * * *

(35) Available for radiotelephony only; normally for communication with common carrier stations located at Kodiak and Nome.

* * * * *

(40) Available for radiotelephony only; for communication with common carrier stations located at Unalaska and Anchorage.

(41) [Reserved]

* * * * *

(45) [Reserved]

[FR Doc. 80-35419 Filed 11-17-80; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 45, No. 224
Tuesday, November 18, 1980

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

Programs for Specific Positions and Examinations (Miscellaneous); Regulation To Govern Promotion of Administrative Law Judges (ALJs)

AGENCY: Office of Personnel Management (OPM).

ACTION: Proposed rulemaking.

SUMMARY: The purpose of this proposal is to develop a regulation to promote Administrative Law Judges (ALJs) within an agency. It would permit OPM, on request of an agency, to select for promotion the agency's GS–15 ALJs who have eligibility on the GS–16 register. This would also assure greater personnel mobility consistent with the objectives of the Civil Service Reform Act, serve to increase productivity, provide greater equity and more easily attract and retain well-qualified ALJs.

DATE: Any interested party may submit written comments regarding this proposal. To be considered, comments must be received on or before January 19, 1981.

ADDRESS: Send or deliver written comments to the Director, Office of Administrative Law Judges, Office of Personnel Management, 1900 E Street, N.W., Room 2470, Washington, D.C. 20415. Comments will be available for public inspection at the above address between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judge Marvin H. Morse, 202–632–4604.

SUPPLEMENTARY INFORMATION: A primary purpose of the Administrative Procedure Act (APA) is to assure the independence of the ALJs who preside at APA formal hearings. To avoid the "subtle influence" that an agency might exert upon its judges to render decisions "in accordance with agency wishes", the employing agencies are prohibited from promoting their judges, this function being solely the responsibility of the OPM [41 Op. A.G. 74, 78 (1951)].

The present regulation governing transfers, 5 CFR 930.206, permits a GS–15 ALJ to transfer noncompetitively to another agency at the GS–16 grade level if the person has eligibility on the GS–16 ALJ register and has served as a GS–15 ALJ for at least one year. However, the agency cannot appoint one of its own ALJs to a vacancy unless the ALJ is "within reach" on the register. In short, there is no present regulation governing the promotion of an ALJ within his/her own agency where there are ALJs at two (2) or more different grade levels. Depending upon the nature and complexity of new legislation, any number of agencies could be in this situation.

This regulation would provide a practical management tool to meet problems arising from a two-grade structure in an agency. Under this regulation, the agency would have discretion to decide that a certain number of vacancies should be filled from within the agency, while OPM would retain the sole responsibility for selecting the most qualified ALJs to fill these positions. OPM has determined that this is a significant regulation for the purposes of E.O. 12044.

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

Accordingly, OPM proposes to revise § 930.204 to read as follows:

§ 930.204 Promotion.

(a) When the Office of Personnel Management classifies an occupied administrative law judge position at a higher grade, the Office of Personnel Management shall direct the promotion of the incumbent administrative law judge and the promotion is effective on the date named by the Office of Personnel Management.

(b) No more than twice a year, an agency may notify the Office of Personnel Management that it wishes to fill a specific number of its grade GS–16 ALJ vacancies from among its grade GS–15 ALJs who are on the GS–16 ALJ register and who have served as judges at the agency for at least one year. The Office of Personnel Management will select the best qualified and notify the agency.

(5 U.S.C. 1305, 3105, 5372)

[FR Doc. 80-35941 Filed 11-17-80; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 20 and 803

[Docket No. 79N–0182]

Medical Devices; Mandatory Device Experience Reporting

AGENCY: Food and Drug Administration.

ACTION: Proposed rule and notice of hearing.

SUMMARY: The Food and Drug Administration (FDA) proposes to require that manufacturers and distributors (including importers) of medical devices submit reports concerning medical devices that (1) may have caused a death or injury; (2) may have a deficiency that could result in a death or injury or that could give inaccurate diagnostic information and, thereby, result in improper treatment; or (3) are the subject of a remedial action. This proposed regulation is issued under the Medical Device Amendments of 1976, which grant FDA the authority to require reports from manufacturers and distributors to assure the safety and effectiveness of medical devices.

DATES: Comments by February 17, 1981. Public hearing on January 22, 1981; notices of participation by January 2, 1981; applications for reimbursement by December 15, 1980. FDA proposes that the regulation become effective 30 days after the date of publication of a final rule in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

Public hearing location: Hubert H. Humphrey Building Auditorium, 200 Independence Ave., SW., Washington, D.C.

Send applications for reimbursement to Office of Consumer Affairs (HFE–88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD. 20857.

FOR FURTHER INFORMATION CONTACT: Robert A. Forst, Bureau of Medical Devices (HFK–70), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7114.

SUPPLEMENTARY INFORMATION: In the course of its regulation of medical devices, the Food and Drug Administration (FDA) currently receives information concerning device design and performance problems from several sources. However, very little of this information is received directly from those best able to provide it on a timely basis, i.e., device manufacturers and distributors. FDA believes that it currently receives few device experience reports from manufacturers because (1) manufacturers hesitate to submit information voluntarily to FDA that could result in a regulatory action; (2) manufacturers wish to avoid disseminating information that could increase the incidence of product liability suits; and (3) manufacturers wish to avoid public disclosure, under the Freedom of Information Act (5 U.S.C. 552 et seq.), of device experience information that has been submitted to FDA. A number of device design and performance problems that have resulted in remedial action by manufacturers have been brought to FDA's attention by sources other than manufacturers, such as practitioners, FDA field investigations, and users. However, practitioners, and users of medical devices usually do not report device experiences to FDA; instead they generally contact, and seek information from, the device manufacturers or distributors. Without the receipt of information relating to device deficiencies that is timely, complete, and accurate, FDA is hampered in its efforts to ensure that commercially distributed medical devices are safe and effective for their intended uses.

To reduce the risk to the public health and the unnecessary economic loss caused by unsafe or ineffective devices, FDA proposes to require that manufacturers and distributors submit reports concerning medical devices that (1) may have caused a death or injury; (2) may have a deficiency that could cause a death or injury or that could give inaccurate diagnostic information and, thereby, result in improper treatment; or (3) are the subject of a remedial action by the manufacturer.

Comment Period

FDA advises that § 10.40(b) (21 CFR 10.40(b)) of its administrative regulations provides that the public will ordinarily have 60 days to comment on any proposed regulation and provides further that after publication on the proposal, any person may request that the comment period be extended for an additional period of time. In the agency's experience, many organizations have difficulty developing consensus comments when the comment period on documents presenting major policy issues runs through the end of December and the beginning of January. The agency has regularly received requests from interested persons to extend the comment period for such documents for an additional 30 days or more.

As discussed elsewhere in this preamble, the agency has decided to hold an open hearing during the comment period to give the public an opportunity to make oral comments on the proposed regulation. To schedule a hearing within the 60-day period after publication of this document would put it in the middle of the holiday season—another inconvenience to interested persons.

For these reasons, the Commissioner of Food and Drugs concludes that good cause exists to provide 90 days to comment on this proposal and to schedule the public hearing to be held on January 22, 1981. The Commissioner advises, however, that this will permit sufficient time for any interested persons to submit not only written comments on the proposed regulation but written views on matters discussed at the public hearing. Thus, absent the most convincing evidence that protection of the public health compels further opportunity to comment, no extension of the comment period, beyond February 17, 1981, will be granted.

Statutory Authority

Section 519 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360i) (the act) grants FDA the authority to promulgate regulations to require manufacturers, importers, and distributors of medical devices to establish and maintain records, make reports, and provide information to FDA to ensure that medical devices are not adulterated or misbranded and are otherwise safe and effective. Section 519 of the act requires that any such regulation (1) shall not be unduly burdensome; (2) shall state the reason or purpose for requiring the submission of any report and identify the information required; (3) may not require the identity of any patient unless required for the medical welfare of the patient, to determine the safety and effectiveness of a device, or the verify a report; (4) may not require a manufacturer, importer, or distributor of class I devices to maintain records or to submit reports of information not in its possession, unless such report or information is necessary to determine whether a device is adulterated or misbranded; and (5) shall have due regard for the ethics of the the profession and the interests of patients. Under section 502(j) of the act (21 U.S.C. 352(j)), a device is misbranded if it is dangerous to health when used in the manner recommended or suggested in its labeling. The agency believes that reports made under this proposed rule are necessary to determine whether a device is misbranded within the meaning of section 502(j) of the act. Reports of death or injury may demonstrate the inadequacy of a device's labeling, and therefore, that the device is misbranded. Thus, manufacturers, importers, and distributors of class I devices will not be exempt from the requirements of the proposed rule.

Any regulation promulgated under section 519 of the act shall not apply to (1) any practitioner who is licensed by law to prescribe or administer medical devices and who manufactures or imports devices solely for use in the course of the individual's professional practice; (2) any person who manufacturers or imports medical devices for the person's own use in research or teaching and not for sale; or (3) any other persons exempted by the regulation.

Legislative History

The legislative history of the Medical Device Amendments (Pub. L. 94–295) reflects clear congressional intent to provide FDA with authority to require manufacturers, importers, and distributors to notify FDA of defects in their products. In discussion the notification provisions of section 518 of the act (21 U.S.C. 360h), the House Committee on Interstate and Foreign Commerce stated:

> The notification provision is similar to, and to some extent patterned after, comparable authority contained in the National Traffic and Motor Vehicle Safety Act of 1966, the Radiation Control for Health and Safety Act of 1968, and the Consumer Product Safety Act of 1972. These statutes also include requirements that manufacturers provide notification of defects in their products to appropriate Federal agencies. The Committee determined that a comparable provision in new section 518(a) with respect to devices would be unnecessary since the Secretary could require the reporting of such information under the recordkeeping and reporting authority provided in new section 519 of the Act. (H.R. No. 853, 94th Cong., 2nd Sess. 21 (1976)).

In its discussion of section 519 of the act, the House Committee gave examples of reasonable reporting requirements: "Examples of reasonable reporting requirements include reporting defects, recalls, adverse reactions, patient injuries, and clinical experience with respect to class III devices." (*Id.* at 23). Although section 519 limits FDA's authority to require records to be maintained or to be submitted, the Committee noted that "They [the limitations] should not be construed, however, as limiting [FDA's] authority to obtain information required to insure that the public is protected from potentially hazardous devices." (*Id.* at 24).

Definitions

Section 803.3 of the proposed rule sets out definitions applicable to the reporting requirements. "Device deficiency" is defined in § 803.3(a) as the failure of a device (1) to perform its intended function or to meet its specifications in a way that could adversely affect its safety and efficacy, or (2) to meet an applicable performance standard. The definition provides several examples of possible causes for such failures. "Injury" is defined in § 803.3(c) to include direct injury caused by the device (e.g., failure of a pacemaker) and indirect injury due to the device's actual or possible failure to perform its intended function (e.g., incorrect test results provided by an in vitro device that cause the patient to receive improper treatment). "Remedial action" is defined in § 803.3(f) to be consistent with the definitons of "recall" and "correction" in § 7.3 (g) and (h) respectively (21 CFR 7.3 (g) and (h)) of FDA's regulations governing the practices and procedures applicable to regulatory enforcement actions initiated by the agency. "Device deficiency," "injury," and "remedial action" are defined so as to require a report to FDA only when an actual or a potential risk to health is posed by the device. FDA is particularly interested in comments concerning the effect of these definitions on the reporting requirements.

"Manufacturer" is defined in § 803.3(d) to include any person required to register under 21 CFR Part 807, as well as manufacturers of general purpose articles, such as chemical reagents or laboratory equipment. Although manufacturers of general purpose articles are exempt from registration under § 807.65(c) (21 CFR 807.65(c)), FDA believes that general purpose articles, if defective, have the potential for causing substantial harm to patients. Therefore, these manufacturers are required to comply with the reporting and recordkeeping requirements in the proposed regulation.

FDA welcomes comments regarding the adequacy of the proposed definitions, the need for further explanation, or the need for additional definitions to assist manufacturers and distributors in complying with the proposed regulation.

Reports by Manufacturers and Distributors Generally

Under the proposed regulation, reports by manufacturers are divided into three categories: (1) reports of death or injury that may have been caused by a device (§ 803.24); (2) reports of device deficiencies that could result in a death or injury or that could give inaccurate diagnostic information and, thereby, result in improper treatment (§ 803.25); and (3) reports of remedial actions taken by manufacturers that are not reported under §§ 803.24 or 803.25 (§ 803.27).

Distributors of devices manufactured in the United States and distributors of imported devices are subject to the requirements of the proposed rule. Distributors of devices manufactured in the United States are required to submit only the first two categories of reports listed above (§ 803.29). Distributors of imported devices under joint ownership or control with the foreign manufacturer are required to submit reports in all three categories listed above as if they were the manufacturer of the device (§ 803.30(a)). All other distributors of imported devices are required to submit only the first two categories of reports listed above (§ 803.30(b)).

The requirement to report any death or injury that may have been caused by a device and the requirement to report a possible device deficiency, whether or not the deficiency is confirmed, arises upon receipt by the manufacturer or distributor of information concerning a death, injury, or possible deficiency. Under the proposed rule, a report is required each and every time a manufacturer or distributor receives pertinent information, regardless of whether the manufacturer or distributor has previously reported a similar experience involving the same device. A report is required even if the manufacturer determines that the death or injury is not due to a device deficiency, or after investigating a possible deficiency, that there is no such deficiency. Under §§ 803.24, 803.25, and 803.30(a), the report shall state the basis for any determination that the death or injury is not due to a device deficiency.

FDA is aware that if reports were required only when a device deficiency is confirmed, reporting would be less frequent and less costly. However, FDA believes that with such a requirement, few device problems would be characterized as confirmed deficiencies and few reports would be submitted, thereby compromising FDA's ability to protect the public from potentially hazardous devices. Moreover, the agency believes that submission of reports of confirmed device deficiencies would be delayed pending the determination by the manufacturer or distributor that such a deficiency actually exists.

For the purpose of this rule, information that must be reported to FDA is considered to be received by the manufacturer or distributor at the time the individual who has been designated by the manufacturer or distributor to submit the report to FDA receives the information, but no later than 3 working days after receipt of the information by any employee of the manufacturer or distributor (§ 803.3(e)). FDA believes that the proposed time periods for reporting will be adequate in most cases. FDA recognizes, however, that in some instances, the necessary information for filing a report will be difficult to obtain within the period permitted by the proposed rule and, therefore, is retaining discretionary authority to grant an extension of reporting time (§ 803.32). FDA specifically requests comments concerning situations in which information required to be reported under this proposed rule may be difficult to obtain.

The agency is aware that the time for submitting reports under this proposed rule are shorter than those in other FDA regulations that require the submission of reports, but FDA believes the differences are justified. The great majority of medical devices currently in commercial distribution have not been subject to any type of premarket review. Deficient medical devices in general distribution may have an adverse effect on thousands of persons. Therefore, FDA must be able to react rapidly to minimize the risk to health posed by a deficient device in general commercial distribution.

The proposed rule is designed to impose a limited burden on the device industry in that it will require manfuacturers and distributors of medical devices initially to submit a minimum amount of information concerning a device experience. This information will be required when a defined event occurs, such as a death, injury, or report of a possible deficiency, regardless of whether a device deficiency is confirmed. Under § 803.34, FDA retains the authority to request,

when necessary, additional information from the device manufacturer or distributor.

The agency is aware of the potentially broad scope of the proposed reporting requirements. Nevertheless, the agency concludes that this information is required for the protection of the public health and safety. Moreover, by facilitating FDA regulatory action, these reports may reduce medical costs to the public that result from unsafe or ineffective devices.

FDA recognizes that manufacturers and distributors submitting reports under this proposed rule will be concerned about the effect of the report on product liability claims. However, submission of a report under §§ 803.24, 803.25, 803.29, or 803.30 is not an admission by the manufacturer or distributor that a device is deficient. Therefore, a report should not, in and of itself, establish liability for a device-related injury.

Reports by Manufacturers

Proposed § 803.24 requires a manufacturer to notify FDA by telephone within 72 hours and to submit a follow-up report to FDA within 7 working days after it receives information concerning any death that may have been caused by a device. Proposed § 803.24 also requires a manufacturer to submit a report to FDA within 7 working days after it receives information concerning any injury that may have bee caused by a device. Proposed § 803.25 requires a manufacturer to submit a report to FDA within 7 working days after it receives information concerning any actual or possible device deficiency.

Under proposed § 803.27, manufacturers are to submit to FDA, within 2 working days of its issuance, a copy of any written communication with distributors, health care practitioners, or users regarding a remedial action. When no written communication has been issued, the manufacturer is required to provide FDA with a description of any remedial action undertaken, within 2 working days of implementing such action. No report is required under § 803.27 in cases in which the manufacturer has submitted a report of the remedial action to FDA under § 803.24 or § 803.25.

The purposes of proposed § 803.27 are: (1) to allow early FDA evaluation of a manufacturer's remedial action to ensure that the action is appropriate and, thereby, to reduce the possible harm to the public health that may result from potentially hazardous medical devices; (2) to reduce or eliminate economic loss incurred by a manufacturer when FDA belatedly learns of a remedial action, investigates its circumstances, and requires additional action; and (3) to reduce the expenditure of scarce FDA field resources to investigate a remedial action report voluntarily submitted to FDA by device practitioners or users.

Reports by Distributors of Devices Manufactured in the United States

Proposed § 803.29 requires a distributor of a device manufactured in the United States to notify FDA by telephone within 72 hours and to submit a follow-up report to FDA within 7 working days after it receives information concerning any death that may have been caused by a device. The proposed regulation also requires a distributor of a device manufactured in the United States to submit a report to FDA within 7 working days after it receives information about any injury that may have been caused by a device or of any actual or possible device deficiency that could result in a death or injury. However, if no death or injury has occurred, the distributor may report an actual or possible device deficiency directly to the manufacturer in lieu of reporting it to FDA. In this case, the distributor shall report to the manufacturer immediately upon receipt of information of an actual or possible device deficiency. FDA believes that the proposed minimal reporting requirements for distributors of devices manufactured in the United States eliminate the need for any extension of time for distributors of devices manufactured in the United States to submit reports.

Reports by Distributors of Imported Devices

FDA is aware that many medical devices are produced by foreign manufacturers and are distributed in the United States by American firms that are affiliated with the foreign manufacturer. FDA believes that such American distributors should be subject to the reporting requirements in a manner comparable to that imposed upon manufacturers. Therefore, proposed § 803.30(a) requires that any distributor that is a parent, subsidiary, or affiliated company under joint ownership with, or control of, the foreign manufacturer of the device and that distributes an imported device within the United States shall be subject to the reporting requirements in §§ 803.24, 803.25, and 803.27, as if it were the manufacturer of the device and located in the United States. Proposed § 803.30(d) permits a distributor that is required to report under 803.30(a) to request an extension of time to report, as described in § 803.32.

Proposed § 803.30(b) requires that any distributor that is not under joint ownership with, or control of, the foreign manufacturer of the device and that distributes an imported device within the United States, shall be subject to the requirements of § 803.29(a) and (b) as if it were the distributor of a device manufactured within the United States. However, when the distributor of an imported device receives information of an actual or possible device deficiency that could result in a risk to health, it shall submit a report to FDA, even if it reports the deficiency to the foreign device manufacturer. Because foreign device manufacturers are not required to submit reports to FDA under the proposed regulation, the agency does not propose to grant distributors of imported devices that are governed by § 803.30(b) the alternative of reporting device deficiencies to the manufacturer instead of FDA.

Complaint Files Maintained by Distributors

Proposed § 803.31 requires that distributors of devices (whether the devices have been manufactured in the United States or have been imported) establish and maintain a complaint file. A record of any information received by the distributor that is required to be reported to FDA under this part shall be maintained in the complaint file for a period of 2 years. A distributor shall maintain a record of each complaint even if the distributor has reported the complaint to FDA, has reported the complaint to the manufacturer in lieu of reporting it to FDA, or has discontinued distribution of the device.

Device manufacturers are required by the GMP regulation in Part 820 to establish and maintain a complaint file and to provide access to, and copying of, the complaint file by authorized FDA representatives. The proposed requirement that distributors establish and maintain a complaint file and provide access to, and allow copying of, the complaint file by authorized FDA representatives is intended to supplement, not supersede, the provisions of Part 820.

In the agency's experience, health care professionals and other device users usually report device experiences to the person from whom the device was purchased, be it the manufacturer or the distributor of the device. The complaint file requirement for device distributors of proposed § 803.31 and the complaint file requirement of manufacturers of Part 820 will assure that FDA has access to

the original complaint arising out of the device experience, regardless of to whom the complaint was reported initially. Access to all original complaints will permit FDA to monitor effectively device experience reporting under this regulation and to assure that the public is protected from potentially harmful devices.

Additional Reports Required Upon Request of FDA

To reduce the reporting burden upon the medical device industry, FDA is proposing to require manufacturers and distributors initially to submit a minimum of information on a broad range of device experiences. However, in some instances, the protection of the public health will require that FDA receive more information regarding a device experience than that initially submited by a manufacturer or distributor under proposed §§ 803.24 through 803.30. Therefore, proposed § 803.34 requires that, upon request of the agency, manufacturers or distributors shall provide FDA with certain additional information.

Exemptions From Reporting

Exemptions from the reporting requirements are set out in proposed § 803.36. Consistent with section 519 of the act (21 U.S.C. 360i), these exemptions will relieve a manufacturer or distributor from submitting a report under this part where FDA has received a report of the same experience under the regulations listed in § 803.36. However, a report submitted under the proposed regulation will not exempt the manufacturer from other existing reporting requirements, e.g., the regulation governing premarket approval of medical devices. Reports required by § 1002.10 (21 CFR 1002.10) or Part 1003 (21 CFR Part 1003) for the Bureau of Radiological Health and by Part 606 (21 CFR Part 606) for the Bureau of Biologics will continue to be reported directly to those Bureaus as required by those regulations.

Failure To Report

Under section 502(t) of the act (21 U.S.C. 352(t)), a device is misbranded if there is a failure or refusal to submit information about the device that is required under section 519 of the act. Under section 301(k) of the act (21 U.S.C. 331(k)), the doing of any act which results in a device being misbranded after its shipment in interstate commerce is a prohibited act. Furthermore, under section 301(q)(1) of the act (21 U.S.C. 331(q)(1)), the failure or refusal to furnish any information required under section 519 is a prohibited act. Under section 301(q)(2) of the act (21 U.S.C. 331(q)(2)), the submission of any required report that is false or misleading in any material respect is a prohibited act. Violations of section 301 may be enjoined under section 302(a) of the act (21 U.S.C. 332(a)). Persons who are responsible for the violation of section 301 may be subject to criminal prosecution under section 303 of the act (21 U.S.C. 333). In addition, devices that are misbranded within the meaning of section 502(t) of the act are subject to seizure and condemnation under section 304(a)(2) of the act (21 U.S.C. 334(a)(2)).

Public Availability of Reports Made Under This Part

The reports required under this proposed regulation are similar to those received under the records and reports regulations for new drugs; to those received from the United States Pharmacopeia Convention, Inc., reporting drug and device defects; and to those reporting adverse reactions to drugs. The agency will delete the name and identifying characteristics of physicians, patients, institutions, and similar persons prior to public disclosure. Similarly, where applicable, the agency will delete confidential commercial information and may treat these reports as investigatory records. The public availability of these records is therefore governed by Part 20 of FDA's regulations (21 CFR Part 20).

Public Hearing

An open hearing will be held beginning at 9 a.m. on January 22, 1981, to give the public an opportunity to make oral comments on the proposed regulations. The hearing will be held under § 15.1(a) (21 CFR 15.1(a)), of FDA's administrative practices and procedures regulations in the auditorium, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC 20201. The presiding officer will be Victor M. Zafra, Acting Director, Bureau of Medical Devices.

The purpose of the hearing is (1) to provide an open forum to present views concerning the merit of the proposed regulations and their general applicability and practicality and (2) to foster greater consideration of the proposal among the regulated industry and the public. Although the hearing will encompass all aspects of the proposal, the agency seeks specific advice on the several areas of consideration discussed in the preamble above.

In preparing final regulations, FDA will consider the administrative record of this hearing along with all other written comments previously received and received during the comment period specified in this proposal.

A written notice of participation under the requirements of § 15.21 (21 CFR 15.21) must be filed with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, not later than January 2, 1981. The notice of participation should contain Docket No. 79N–0182, the name, address, and telephone number of the person desiring to make a statement, along with any business affiliation, a summary of the scope of the presentation, and the approximate amount of time requested for the presentation. To facilitate identification, the envelope containing the notice should be marked "MER Hearing." A schedule for the hearing will be filed with the Dockets Management Branch and mailed to each person who files a notice of participation within the specified filing time. Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and to request time for a joint presentation.

If the response to this notice of hearing is such that insufficient time is available to accommodate the full amount of time requested in the notices of participation received, the agency will allocate the available time among the persons making the oral presentation. Formal written statements on the issues may be presented to the presiding officer on the day of the hearing for inclusion in the administrative record.

If the response to this notice of hearing is such that all persons cannot be accommodated, the hearing will be extended for an additional day, as appropriate.

The hearing will be open to the public. Any interested person may be heard on matters relevant to the issues under consideration.

FDA has established a pilot program for financial assistance to participants in certain agency proceedings, including hearings under Part 15. This program is described in regulations (21 CFR Part 10, Subpart C) that were published in the Federal Register of October 12, 1979 (44 FR 59174) and that became effective October 25, 1979 (44 FR 72585; December 14, 1979). Subject to the availability of funds and other factors, FDA may reimburse participants meeting the criteria set forth in these regulations for certain costs of participating in this proceeding. Applications for reimbursement must be filed by December 15, 1980 in accordance with § 10.210(a) (21 CFR 10.210(a)). For more information regarding the

reimbursement program, contact Curtis Noah, Office of Consumer Affairs (HFE-88), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3170.

Although reimbursement may be made available for the hearings under Part 15, the program's priority will be given to funding participation in formal evidentiary public hearings under Part 12 or public boards of inquiry under Part 13 of FDA's regulations (21 CFR Part 12 or 13).

Environmental Impact

The agency has determined pursuant to 21 CFR 25.24(b)(12) (proposed December 11, 1979, 44 FR 71742) that this proposal is of a type (issuance of a procedural or administrative regulation) that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Federal Reports Act

The recordkeeping and periodic reporting requirements contained in this proposal are subject to clearance by the Office of Management and Budget (OMB) under the Federal Reports Act of 1942 (44 U.S.C. Chapter 35). During the comment period on this proposal, FDA intends to submit to the Director, OMB, copies of this proposed regulation and other related materials. If OMB approves the proposed requirements, FDA intends to impose the requirements at the time a final regulation based on the proposal is made effective. If OMB does not approve, without change, the recordkeeping and periodic reporting requirements contained in the proposal, FDA will revise the final regulation as necessary to comply with OMB's determination. Any comments received from OMB will become part of the administrative record for this matter and will be placed on file for public review in the office of the Dockets Management Branch, FDA, in Docket No. 79N-0182.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502(t), 519, 701(a), 704(e), 52 Stat. 1055, 90 Stat. 564-565, 578, 581 (21 U.S.C. 352(t), 360i, 371(a), 374(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 803, to read as follows:

PART 803—MANDATORY DEVICE EXPERIENCE REPORTING

SUBPART A—GENERAL PROVISIONS

Sec.

803.1 Scope.
803.3 Definitions.

Subpart B—Reports and Records

803.24 Report of death or injury by a manufacturer.
803.25 Report of a device deficiency by a manufacturer.
803.27 Report of a remedial action by a manufacturer.
803.29 Reports by a distributor of a device manufactured in the United States.
803.30 Reports by a distributor of an imported device.
803.31 Complaint files maintained by a distributor.
803.32 Extension of reporting time.
803.33 Where to submit a report.
803.34 Additional reports required upon request.
803.36 Exemption from reporting.

Authority: Secs. 502(t), 519, 701(a), 704(e), 52 Stat. 1055, 90 Stat. 564-565, 578, 581 (21 U.S.C. 352(t), 360i, 371(a), 374(e)).

Subpart A—General Provisions

§ 803.1 Scope.

(a) FDA is requiring manufacturers and distributors of medical devices to submit reports to FDA concerning devices which (1) may have caused a death or injury; (2) may have a deficiency that could result in a death or injury or that could give inaccurate diagnostic information and, thereby, result in improper treatment; or (3) are the subject of a remedial action by the manufacturer. This information will enable FDA to ensure that medical devices are not adulterated or misbranded and are otherwise safe and effective for their intended uses. In addition, distributors of devices are required to establish and maintain complaint files and to allow access to, and copying of, these files by authorized FDA representatives.

(b) This regulation supplements, and does not supersede, the provisions of Part 820, including the requirement that manufacturers establish and maintain a complaint file (§ 820.198) and allow access to, and copying of, the file by authorized FDA representatives (§ 820.180).

(c) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

§ 803.3 Definitions.

(a) "Device deficiency" means the failure of a device (1) to perform its intended function or to meet its specifications in a way that could adversely affect its safety or effectiveness, which failure may be the result of inadequate or erroneous design, manufacture, labeling, storage, transport, relabeling, repackaging, or other cause; or (2) to meet an applicable performance standard.

(b) "Distributor" means any person or firm that furthers the marketing of a device from the original place of manufacture to a device from the original place of manufacture to the person who makes the final delivery or sale to the ultimate consumer or user, but not include a manufacturer, as defined in paragraph (d).

(c) "Injury" means any unintended impairment of, or damage to, body structure or function that is incurred with the use of a medical device. Injury also includes any harm to health that results from the failure to receive proper medical treatment as a result of a device's failure to perform its intended function.

(d) "Manufacturer" means any person who is required to register under Part 807 and any person manufacturing general purpose articles, such as chemical reagents or laboratory equipment, who is exempt from registration under § 807.65(c). The term includes any person who repackages or otherwise changes the container, wrapper, or labeling of a device or device package. The term does not include a person who initially distributes an imported device, §§ 807.3(d)(2) and 807.20(a)(4) notwithstanding.

(e) "Receives information" means the point at which the individual who has been designated by the manufacturer or distributor to submit the report to FDA receives the information, but no later than 3 working days after any employee of the manufacturer or distributor has received the information. Device experience information may be received either from persons outside the firm or developed from information discovered internally by the manufacturer or distributor.

(f) "Remedial action" means any recall, repair, modification, adjustment, relabeling, distruction, inspection (including patient monitoring), or any other action that is initiated by a manufacturer to correct any suspected or confirmed device deficiency.

(g) Any term defined in section 201 of the act (21 U.S.C. 321) shall have that definition.

(h) "FDA" means the Food and Drug Administration.

Subpart B—Reports and Records

§ 803.24 Report of death or injury by a manufacturer.

(a) Whenever a manufacturer receives information that one of its devices may have caused a death or injury, the manufacturer of the device shall:

(1) In the case of every death:

(i) Notify FDA by telephone within 72 hours of receipt of the information and

(ii) Submit a written report to FDA within 7 working days of receipt of the information. The report shall include the information listed in § 803.24(b).

(2) In the case of every injury, submit a written report to FDA within 7 working days of receipt of the information. The report shall include the information listed § 803.24(b).

(b) The notification or report of a device experience shall contain:

(1) Brand name and common or usual name of the device.

(2) Model, catalog, or other identification number or code of the device.

(3) Lot or serial number or code of the device.

(4) Name and address of the manufacturer.

(5) The location or locations at which the device was manufactured.

(6) Name, address, and telephone number of the individual responsible for reporting the device experience to FDA.

(7) A complete description of the circumstances of the death or injury, including the nature or severity of the injury. In the alternative, a copy of a complaint received by the manufacturer may be submitted if the complaint adequately describes the circumstances of the death or injury.

(8) The basis for any determination by the manufacturer that the death or injury was not caused by a devise deficiency.

(9) An outline of the plan for remedial action, if any.

(10) The basis for any determination by the manufacturer that the death or injury may have been caused by a device deficiency, but that a remedial action is not advisable or necessary.

(c) A manufacturer shall report to FDA as required under this section each time it receives information that one of its devices may have caused a death or injury, even if an experience of the same or similar nature has been reported previously to FDA.

(d) If FDA initiates an investigation of a reportable death or injury before a written report is submitted and the manufacturer submits the information listed in § 803.24(b) to FDA as part of that investigation, then FDA may notify the manufacturer that the written report required under this section need not be submitted.

e. A manufacturer may request under § 803.32, an extension of time to submit the written report required under this section.

§ 803.25 Report of a device deficiency by a manufacturer.

(a) Whenever a manufacturer receives information that one of its devices may have a deficiency that (1) could result in a death or injury or (2) could give inaccurate diagnostic information and, thereby, result in improper treatment, the manufacturer of the device shall submit a written report to FDA within 7 working days of receipt of the information.

(b) The report of device deficiency shall contain:

(1) Brand name and common or usual name of the device.

(2) Model, catalog, or other identification number or code of the device.

(3) Lot or serial number or code of the device.

(4) Name and address of the manufacturer.

(5) The location or locations at which the device was manufactured.

(6) Name, address, and telephone number of the individual responsible for reporting the device deficiency to FDA.

(7) A complete description of the possible or confirmed device deficiency and of the circumstances surrounding its discovery. In the alternative, a copy of a complaint received by the manufacturer may be submitted if the complaint adequately describes the actual or possible device deficiency and the circumstances surrounding its discovery.

(8) The basis for any determination by the manufacturer that the device does not have a deficiency.

(9) An outline of the plan for remedial action, if any.

(c) A manufacturer shall report to FDA under this section each time it receives information that one of its devices may have a deficiency that (1) could result in a death or injury or (2) could give inaccurate diagnostic information, and, thereby, result in improper treatment, even if a deficiency of the same or similar nature has been reported previously to FDA.

(d) A manufacturer may request, under § 803.32, an extension of time to submit the written report required under this section.

§ 803.27 Report of a remedial action by a manufacturer.

(a) Whenever a manufacturer initiates a remedial action for a device that has not been reported under § 803.24 or § 803.25, the manufacturer shall submit to FDA within 2 working days of initially implementing the remedial action a copy of any written communication with distributors, practitioners, or others regarding the remedial action.

(b) If no written communication has been issued, the manufacturer shall submit to FDA within 2 working days of initially implementing the remedial action a report of the remedial action undertaken. The report of remedial action shall contain:

(1) Brand name and common or usual name of the device.

(2) Model, catalog, or other identification number or code of the device.

(3) Lot or serial number or code of the device.

(4) Name and address of the manufacturer.

(5) The location or locations at which the device was manufactured.

(6) Name, address, and telephone number of the individual responsible for reporting the remedial action to FDA.

(7) A complete description of the remedial action undertaken.

§ 803.29 Reports by a distributor of a device manufactured in the United States.

(a) Whenever a distributor of a device manufactured in the United States receives information that one of its devices may have caused a death or injury, the distributor shall:

(1) In the case of every death:

(i) Notify FDA by telephone within 72 hours of receipt of the information and

(ii) Submit a written report to FDA within 7 working days of receipt of the information. The report shall include the information listed in § 803.29(c).

(2) In the case of every injury, submit a written report to FDA within 7 working days of receipt of the information. The report shall include the information listed in § 803.29(c).

(b) Whenever a distributor of a device manufactured in the United States receives information that a device it distributes may have a deficiency that (1) could result in a death or injury or (2) could give inaccurate diagnostic information and, thereby, result in improper treatment, the distributor of the device shall notify FDA in writing within 7 working days of receipt of the information. In lieu of submitting a report to FDA, the distributor may submit a report to the manufacturer immediately upon receipt of the information. A report under this section shall include the information listed in § 803.29(c).

(c) The notification or report of a device experience shall contain:

(1) Brand name and common or usual name of the device.

(2) Model, catalog, or other identification number or code of the device, if known.

(3) Lot or serial number or code of the device, if known.

(4) Name and address of the manufacturer.

(5) Name and address of the distributor.

(6) Name, address, and telephone number of the individual responsible for reporting the device experience to FDA.

(7) A complete description of the circumstances of the death or injury, including the nature or severity of the injury, or a complete description of the actual or possible device deficiency. In the alternative, a copy of a complaint received by the distributor may be submitted if the complaint adequately describes the device experience.

(d) A distributor shall report to FDA or the manufacturer as required under this section each time it receives information that a device it distributes may have caused a death or injury or may have a deficiency that (1) could result in a death or injury or (2) could give inaccurate diagnostic information and, thereby, result in improper treatment, even if an experience of the same or similar nature has been reported previously to FDA or to the manufacturer.

(e) A distributor of a device manufactured in the United States shall maintain a complaint file as set forth in § 803.31.

§ 803.30 Reports by a distributor of an imported device.

(a) Any distributor that distributes an imported device within the United States and that is a parent, subsidiary, or affiliated company under joint ownership with, or control of, the foreign manufacturer of the imnported device is subject to the requirements of §§ 803.24, 803.25, and 803.27 as if it were the manufacturer of the device and located in the United States.

(b) Any distributor that distributes an imported device within the United States and that is not subject to § 803.30(a) is subject to the requirements of § 803.29 as if it were a distributor of a device manufactured within the United States. However, a distributor of an imported device shall submit all reports to FDA, even if the distributor submits a report to the foreign manufacturer.

(c) A distributor of an imported device shall maintain a complaint file as set forth in § 803.31.

(d) A distributor of an imported device may request, under § 803.32, an extension of time to submit the written report required under this section.

§ 803.31 Complaint files maintained by a distributor.

(a) A distributor shall establish and maintain a complaint file containing a record of any information, including any written or oral complaint received by the distributor, that is required to be reported to FDA by a distributor or a manufacturer under this part. The record shall contain the information listed in § 803.29(c).

(b) Copies of complaints shall be retained for a period of 2 years from the date of their receipt, even if the distributor has ceased distribution of the device that is the subject of the complaint.

(c) The complaint file established under this section shall be maintained at a location that is reasonably accessible to authorized FDA representatives. Distributors shall allow authorized FDA representatives to examine, copy, or verify at reasonable times and in a reasonable manner, the records contained therein.

§ 803.32 Extension of reporting time.

(a) At the request of a device manufacturer or of a distributor of an imported device, FDA may grant the manufacturer or distributor an extension of time to submit the written report required under § 803.24, § 803.25, or § 803.30(a). A request shall state the additional time needed and provide the reasons the extension is necessary. The request shall state whether a death or injury has occurred and shall include the information listed in § 803.24(b)(1) through (6).

(b) A request for an extension of time shall be made within 7 working days of the manufacturer's or the distributor's receipt of the information concerning the death, injury, or possible deficiency. A request made by telephone shall be confirmed in writing within 3 working days of the telephone request.

§ 803.33 Where to submit a report.

Any notification or report required under this regulation or any request for extension of time shall be submitted to Device Experience Report, Bureau of Medical Devices, Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910 (a telephone number will be added in the final regulation).

§ 803.34 Additional reports required upon request.

Whenever FDA determines that protection of the public health requires information in addition to that initially submitted under this part, the manufacturer or distributor shall submit, upon request of FDA, any of the information listed below. Except for information referred to in paragraph (a) of this section, FDA will not require submissions of information already provided to FDA under this part. Additional items of information that may be requested include:

(a) A description of the device, including brand name and common or usual name.

(b) The total number of devices manufactured, the expiration date of the device, if any, and location of the device in inventory stock and distribution channels, including a list of all consignees and the numbers of devices shipped to these consignees.

(c) Lot, serial, model, catalog, or identification number or code of the device and the dates the device was manufactured and distributed.

(d) Name and address of the manufacturer or distributor.

(e) Name, address, and telephone number of the individual responsible for reporting the death, injury, actual or possible device deficiency, or remedial action to FDA.

(f) A complete description of the actual or possible device deficiency and the circumstances surrounding its discovery, including the date of its discovery.

(g) An evaluation, including failure analysis, of any possible risk of death or injury that could result from the deficiency, and copies of any laboratory testing or analyses available to, or used by, the manufacturer or distributor.

(h) Any existing evaluation by a medical practitioner of the nature or severity of any injury that resulted from the use of the device.

(i) A description of any changes in the device or its labeling required to eliminate the risk of death or injury associated with a device deficiency.

(j) A description of any plan to notify device users of possible remedial actions, including any plan to reimburse users or to repair or replace the device.

(k) A copy of any communication to manufacturers, distributors, practitioners, users, or others regarding a remedial action.

(l) Name and address of persons to whom a communication regarding a remedial action has been or will be transmitted.

(m) Name and address of all patients who have received therapeutic or diagnostic treatment with the device.

(n) Copies of reports of any similar deaths, injuries, deficiencies, or complaints, including the name and address of the person who submitted the information.

(o) Name and address of the person submitting the information about the death, injury, or actual or possible device deficiency to the manufacturer or the distributor.

§ 803.36 Exemption from reporting.

Manufacturers and distributors otherwise subject to this regulation are exempt from submitting a report required under this part, if the manufacturer or distributor submits a report regarding the particular experience in acordance with:

(a) Part 606, Bureau of Biologics, Current Good Manufacturing Practices for Blood and Blood Components;

(b) Section 1002.20 or Part 1003, Bureau of Radiological Health, Reporting of Accidental Radiation Occurences and Notification of Defects or Failure to Comply.

Interested persons may, on or before February 17, 1981 submit to the Dockets Management Branch, (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Dockets Management Branch, Food and Drug Administration.

Dated: November 5, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 181

[Notice No. 358]

Amendments to Explosive Materials Regulations

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice results from a review by the Bureau of Alcohol, Tobacco and Firearms (ATF) of explosives regulations and the comments received on a previous notice of proposed rulemaking. The regulatory changes made in this notice clarify and improve the explosives regulations. This notice also includes many of the suggestions submitted during the previous notice of proposed rulemaking comment period.

DATE: Comments must be received on or before January 19, 1981.

ADDRESS: Before adopting these proposed regulations, ATF will consider any written data, comments or suggestions which are submitted to: Chief, Regulations, and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION: The Bureau of Alcohol, Tobacco and Firearms published a notice of proposed rulemaking (Notice No. 309) in the **Federal Register** of August 3, 1977 (42 FR 39316). This notice proposed (1) a substantial amending of the regulations, particularly with respect to the recordkeeping and storage requirements for explosive materials, (2) the addition of new terms and revision of existing language to conform more to current industry terminology and (3) the making of numerous miscellaneous, clarifying, and editorial changes. Written data, comments, and suggestions on the proposed regulations were invited. In response to the notice of proposed rulemaking, written comments were submitted by 19 industry members (manufacturers, users, carriers, distributors), seven trade associations, four agencies of the Federal Government, one agency of a State Government, one workers union, and one individual. Additional comments were submitted by ATF offices. Because a number of changes were made in regulations previously proposed and it has been a lengthy amount of time since that notice of proposed rulemaking, the Bureau has decided to issue a new notice of proposed rulemaking. A few new proposals are also included in this notice of proposed rulemaking.

The previously proposed regulations and comments are summarized as follows:

Summary of Previously Proposed Regulations, Comments, and Changes Pursuant to Comments

New Subpart JJ—Storage

The notice proposed a new Subpart JJ which included the provisions now found in Subpart J and the changes affecting the storage of explosive materials proposed in the notice. Two types of comments were received: first, to make the effective date for mandatory compliance with a proposed Subpart JJ three years from the date of the Treasury decision rather than two, and second, "grandfather" all current storage construction that are in compliance with Subpart J. However, since the major construction requirements for explosives magazines previously proposed have been deleted, a one year phase-in period is proposed in this notice.

Various comments submitted suggested liberalization of the regulations. Some of these were accepted and are included in Subpart JJ. The proposals and comments included:

Bullet-Resistant Construction of Magazines. The original proposals (a) incorporated a listing of materials and combinations of other materials that also meet minimum specifications for bullet-resistancy, and (b) increased the bullet-resistant construction of high explosive storage magazines. Eight commenters objected to increasing the exterior construction of magazines, reasoning that the result would be a financial burden to upgrade facilities; that the 2 inches of hardwood lining currently required is sufficient (as opposed to the 3 inches proposed in the notice); that history does not evidence a further tightening of existing requirements; and that anyone dedicated to firing a weapon into an explosives magazine could do so regardless of the stricter requirements. Another commenter indicated that the increase in the lining would cause a weight problem in types 2 and 3 magazines. (See also paragraph entitled "Type 3 Magazines.")

The Bureau does not have enough information to evaluate the economic impact of upgrading explosives magazines to meet higher bullet-resistancy standards. Therefore, the regulations intending to upgrade explosives magazines for bullet-resistancy will not be issued until an analysis of economic impact can be done. An advance notice of proposed rulemaking will be issued in the future to obtain the information necessary to do an economic impact analysis. The advance notice will be sent to all those

known to have explosives storage facilities.

Housekeeping. The original notice proposed to (a) allow live trees over 10 feet tall within 25 feet of the magazines, and (b) further define "deteriorated explosives" to include explosives in an unstable condition and explosives leaking any other material, not only a liquid. The comments received suggested the deletion of the phrase "or other material", noting that leakage from explosive materials does not necessarily denote a deteriorating or hazardous condition and that it may lead to confusion as to what is to be destroyed. An example given was ANFO leaking from a hole in its bag, which does not denote a deteriorating condition. The Bureau agrees with this suggestion and the proposed regulations now reflect this.

Table of Distances for the Storage of Explosive Materials. The original notice proposed to include a revised (November 1971) IME Table of Distances in the new regulations to replace the one in current Subpart J which had been published in 1964. No comments were received objecting to this proposal.

Type 1 Magazines. There were several comments submitted relating to type 1 magazines. One suggestion was to require ventilation for only the storage of dynamite and other nitro-based explosives. The Bureau did not agree with this suggestion on the basis that any high explosive may be stored in type 1 magazines, regardless of whether it is nitro-based or not, and we do not approve type 1 storage magazines on the basis of what type of high explosive is stored within. To do so would require specification of a new type of storage magazine which is beyond the scope of this proposal. Another suggestion was to allow the storage of explosives on nonsparking pallets as an alternative to covering floors with a nonsparking material. The Bureau agrees with this suggestion and the proposed regulations allow use of nonsparking pallets as an alternative.

Type 2 Magazines. (1) Indoor Magazines—One trade association suggested a change in the exterior construction of wood magazines to allow the use of not less than 26-gauge sheet metal as a covering rather than the current not less than 20-gauge requirement. The purpose of the sheet metal covering is to provide resistance to fire, and the Bureau feels that allowing the use of not less than 26-gauge sheet metal as suggested provides sufficient resistancy. The suggestion also would bring the regulation into conformity with recommended industry standards.

(2) Cap Boxes—Two suggestions were submitted concerning this type of storage. One was, rather than to require that hinges and hasps be attached by welding, to require that they be substantially attached. The Bureau considered this suggestion and decided to include the same flexibility by modifying the requirement to permit hinges and hasps to be installed in such a manner they cannot be removed when the doors are closed and locked. The other suggestion was to specify that hoods are not required for cap box padlocks. This suggestion was intended to provide clarification. Again, the Bureau agrees that this is a valid point. The proposed regulations now incorporate the above changes.

Type 3 Magazines. The suggestions submitted concerned deletion of the bullet-resistant requirement and the liberalization of lock requirements. The commenters cited that these "day boxes" are attended and that security is maintained when storing explosives. They added that requiring that a magazine be bullet-resistant and that hinges, hasps, and locks meet requirements for type 1 storage are unnecessary for these reasons. The Bureau agreed with the suggestions and has modified the proposed regulations in this notice by deleting bullet-resistancy and providing new specifications for construction and locks.

Types 4 and 5 Magazines. Suggestions were submitted to require ventilation on both types of magazines and to require that type 5 magazines be fire resistant. Due to the economic burdens of reconstructing magazines to meet such requirements, these suggestions will be considered in future Bureau studies.

(Secs. 181.207, 181.208, 181.209, 181.210 and 181.211 added)

Other Changes Affecting Magazine Construction and Storage. The previously proposed regulatory revisions included:

1. *An expansion of the description of high explosives, low explosives, and blasting agents.* Several different comments to eliminate confusion were suggested in regard to this proposal, such as: to add detonators as an additional example for high explosives; to delete references to bullet-sensitivity from the descriptions of high and low explosives because the term is not easily understood nor uniformly interpreted; and to refer also to the definition of blasting agents in § 181.11, in the new description of blasting agents in § 181.202. The Bureau determined that these suggestions provide clarification and the proposed regulations are now amended accordingly. Another comment submitted was to include certain "emulsions" as examples of blasting agents. The Bureau feels that the term is too specific to be included in the description at the present time, but will consider it again in the future when the term becomes common industry terminology.

(Sec. 181.202 added)

2. *A relaxation of the restrictions on the classes of explosive materials to be stored in type 4 magazines.* Since proposed § 181.203 permits electric blasting caps that will not mass detonate to be stored in type 4 magazines, a comment was submitted to also add language in § 181.210 setting out the quantity restrictions for the indoor storage of such electric blasting caps in type 4 magazines. This language is consistent with the present requirements for the indoor storage of blasting caps and was inadvertently omitted from the previous notice. These proposed regulations are amended to reflect this change.

3. *A requirement that when storage magazines are opened and inspected a determination be made if there has been any unauthorized entry or attempted entry into the magazines or if any unauthorized removal of their contents has occurred.* Three comments were received on this proposal. One was to change the requirement of inspection to twice a week to permit easier scheduling. Another was to change the proposal so that the magazines would not have to be opened every 3 days unless the inspection indicating tampering, otherwise, opened only once a month. The commenters based the suggestions on manpower availability, citing that many magazine doors were to heavy to be opened by one person, and that to require opening every 3 days would place a burden on them. The Bureau did not propose a change in the magazine inspection frequency in the previous notice of proposed rulemaking. However, after considering the comments, the Bureau now has decided to propose that magazine inspection frequency be at least every seven days.

(Sec. 181.204 added)

4. *Numerous amendments to provide more flexibility in the construction of types 1, 2, 3, 4, and 5 magazines, both indoor and outdoor.* Some of the comments submitted apply to all or several of the types of magazines generally.

One of the general comments suggested "other adequate drainage" as an alternative to the ground sloping

away for outdoor magazines. The commenters cited the use of a tile drain as an example. The Bureau agrees with this proposal and has now amended the proposed regulations accordingly. Another comment, by an association, suggested a minimum size shackle on a lock of at least 7/16-inch diameter rather than the 3/8-inch diameter as proposed. We have adopted this suggestion. Another commenter suggested deletion of the requirement that lock shackles be casehardened since neither the hasp nor the staple are required to be casehardened. The Bureau has not adopted this suggestion, but decided to expand our proposal to provide more security by requiring that hoods be constructed as to prevent sawing or lever action on the locks, hasps, and staples on types 1, 2, 4, and 5 magazines, rather than just the locks and hasps. A comment was made by an association to retain the current requirement that trailers are required to have two padlocks, not one, for storage in types 2 and 4 magazines to provide greater security. The Bureau reconsidered this proposal in light of the suggestion and decided not to liberalize the locking requirements for type 2 and 4 magazines applicable to trailers, semitrailers, and similar vehicular magazines storing high explosives.

5. *Four suggestions were submitted regarding type 2 and type 4 indoor storage:*

a. To increase the indoor storage limitations from 50 pounds to 100 pounds.

b. To delete the requirement that magazines be located within 10 feet of an outside exit.

c. To delete the requirement for substantial wheels or casters on magazines.

d. To permit any number of magazines in the same building as long as the total maximum quantity of explosives permitted is not exceeded.

The Bureau opposes the suggestion to increase the indoor storage limitations to 100 pounds since it would not be in the best interest of safety and would conflict with industry and other recommended safety standards. The Bureau feels that the other three suggestions make valid points. We have found that many fire marshals and insurance companies do not recommend removal of magazines during a fire and in fact feel that the 10-foot requirement would be a hazard to persons escaping a fire. Because of the conflict, the Bureau is proposing to delete the mandatory requirements that a magazine be located within 10 feet of an outside exit and be equipped with substantial wheels or casters, and leaves the decision up to the local jurisdiction. No problem exists in permitting several magazines to be located in the same building as long as the total quantity of explosive materials stored does not exceed 50 pounds. The applicable proposed regulations now note these changes.

(Secs. 181.208 and 181.210 added)

6. *A clarification that nonsparking lattice work or other nonsparking material may be used to prevent stored explosive materials from coming in direct contact with interior walls and an explanation that the term "Class", in the requirement that explosive materials be stored in such a way that grade, brand, and Class marks are visible, refers to the Department of Transporation shipping classification on the container.* The only comment submitted suggested a deletion of the Department of Transportation Class reference and to only require the grades and brands be visible. Rather than this, since Department of Transportation markings are helpful in taking inventories of explosive materials, the Bureau has not modified the regulation to delete the requirement that grade marks, which do not serve a purpose with respect to storage, are visible.

(Sec. 181.214 added)

7. *A provision to allow the use of electrical lighting when explosion-proof fixtures and wiring in rigid conduit are employed inside the magazine and all electric switches are located outside the magazine.* The National Electrical Code has minimum safety standards for lighting placed or used in explosives magazines. Since this code is updated continually to include advances in electrical technology, the Bureau has decided to adopt these standards. Therefore, we are amending the previously proposed regulations accordingly.

(Sec. 181.217 added)

Additional Comments

Several other comments were submitted that did not directly relate to the previous proposed notice. One suggestion was to include a requirement to use the oldest stocks of explosive materials first. The Bureau feels that enough information is provided by the manufacturer with the explosive materials to enable the user to determine this. Therefore, this suggestion was not adopted. Another suggestion was to decrease the 50-foot limitation on smoking to 25 feet. The Bureau feels that the current requirement is not overly restrictive and that it would not serve any purpose to decrease the limits to 25 feet. The suggestion was not accepted. Another commenter suggested the elimination of restrictions for storage in excess of 300,000 pounds of explosive materials or more than 20 million blasting caps, since the restrictions are not based on safety-related considerations, and they are covered by quantity and distance requirements elsewhere in the regulations. Again, the Bureau does not feel the current provisions are overly restrictive and although the table of distances for storage of explosive materials has 300,000 pounds as the uppermost limit, the maximum quantity restrictions are not specifically given. The Bureau did not accept this suggestion.

Recordkeeping

The previous notice included proposals to (a) change the record retention requirements by requiring permittees or licensees to forward all explosive materials records relating to transactions which occurred more than 5 years before the renewal date of the license or permit to Bureau Headquarters or retain these records on their business premises for not less than 10 years from the day the transaction occurred; (b) revise the format for recording the acquisition and disposition of explosive materials to provide ATF with sufficient data to aid in the tracing of stolen materials and explosives used in bombs and to insure that a licensee or permittee has the necessary information in his records to properly report thefts and losses of explosive materials from his stock; and (c) allow the daily magazine transaction summaries to be kept at one central location on the licensed premises as long as separate records of daily transactions are maintained for each magazine.

Eight of nine comments submitted opposed the record retention changes. The commenters indicated that the proposals would be almost impossible to comply with, would not be economically practical to the industry or to the United States, would create a burden, and that ATF would have problems correlating the data. Alternative proposals were to keep the 10 year retention requirement only, keep the present 5 year requirement, or decrease the retention requirement to 3 years. In light of these comments, the Bureau has decided to withdraw the proposal at this time for further study.

Several commenters felt that there is a problem in determining how to record explosives quantities in the acquisition and disposition records, noting that the regulations require the records to indicate "pounds" of explosives and

"number" of caps. These commenters suggested the use of the term "applicable quantity units" for the records rather than being limited to "pounds" and "number." This was the Bureau's intention and the inclusion of "pounds" of explosives and "number" of caps were merely examples to be considered. We, therefore, are clarifying the regulations in this notice to also reflect the term "applicable quantity units." One comment was submitted concerning the daily magazine summaries. This commenter suggested that entries be allowed to be made the next business day rather than at the close of the same business day, citing that in many instances overtime must be paid to an employee. The Bureau feels that this suggestion is reasonable, especially when the records are maintained at a central location rather than at the magazine since employees will have to report the date to the central location. The Bureau foresees no problem in implementing this suggestion and now amends the proposed regulations accordingly.

(Secs. 181.121, 181.122, 181.123, 181.124, 181.125, and 181.127)

Other Amendments to the Regulations

The previous notice contained proposals relating to various other sections of the regulations, including:

1. *An amendment to the procedure for reporting a theft or loss of explosive materials to require more specific information when reporting and to require the carrier to report a theft or loss of explosive materials in transit.* Several comments were received regarding both proposed provisions. The suggestions relating to the former provision would require submitting all of the required theft or loss reporting information "if known." For the latter provision, the suggestions would add a new paragraph to regulations, specifically for carriers, that would not require a written report and would allow the carriers to identify stolen or missing explosive materials by the Department of Transportation markings on the package and the shipping information on the invoice. The Bureau's intent is to insure that all thefts or losses are reported. We realize that in some instances, the carrier, or even the licensee or permittee, does not know or cannot determine all the required information when reporting a theft or loss. We also wish to simplify the requirements imposed on the carriers and realize that many of the drivers are not familiar with explosives products. Therefore, the Bureau has decided to adopt the suggestions and the appropriate changes are now made to these proposed regulations.

(Sec. 181.30)

2. *A proposed clarification and separation of the regulations covering changes of address of a licensee's or permittee's business premises and changes in location and construction of explosives storage magazines.*

a. Two comments received suggested further clarifying what copies of licenses or permits to return for correction when a change of address occurs. The Bureau intended that only copies of licenses or permits that were furnished by the regional regulatory administrator be returned. The proposed regulations are now amended accordingly.

b. Eight comments were submitted relating to changes in location and construction of explosives storage magazines. The commenters felt that there should be an alternate means, such as by telephone, to obtain immediate approval for storage in new magazines or new locations or if there are changes in construciton of approved magazines. It was also suggested that this procedure would prevent undue delay in emergency situations, such as those resulting from severe storm damage. In emergency situations, the Bureau presently has special provisions in the regulations to allow for the immediate approval of magazine construction and other methods of operations, if necessary. In other situations, we are aware that a problem exists. We are studying the matter further and plan to handle the problem administratively, rather than by regulation.

(Sec. 181.54 amended and §§ 181.63 and 181.64 added)

3. *A proposed requirement (a) that the license or permit application also be kept available for inspection on the business premises, (b) the license or permit be prominently posted, and (c) in lieu of requiring a copy of the license or permit to be kept at each approved magazine, permission for it to be kept at one central location on the business premises.* One comment expressed confusion as to whether or not we were proposing that a copy of the license or permit application be kept at each magazine. As a result, we are now rewriting the regulation to clarify that we intend only to require the application to be kept available for ATF inspection on the business premises. Two comments opposed the proposed requirement to post the license or permit in a prominent place, reasoning that the requirement would be unnecessary and undesirable from a security standpoint. We agree and are now deleting the word "prominently" and retaining the current requirement that the license or permit simply be available for ATF inspection. The Bureau has also decided to delete the proposal to allow copies of licenses and permits to be kept at one central location in lieu of each magazine and retain the current requirements that provide identification for magazines. The proposed regulation is now amended accordingly.

(Sec. 181.101)

4. *A proposed provision that the Director determine whether any explosive materials (except blasting caps) are small enough in size to be exempt from the requirement that manufacturer's marks of identification be placed on the individual item.* The comments received mainly concerned specifying exemptions in the regulations for items such as Class C detonating fuses, oil well perforators, linear shaped charges, and boosters. The Bureau does not wish to include a specific exemption in the regulations for certain explosive materials and not others without further study. We are, therefore, requiring that the Director authorize exemptions on a case-by-case basis at this time. We are also providing for alternative identification marks on fireworks if approval is given by the Director. Two other comments were submitted suggesting that ATF specify marking requirements for imported explosives to require wire lengths to be marked on caps as a safety precaution and as an aid in describing stolen explosives. The suggestion to mark imported explosives is beyond the scope of this proposal and will be considered in future Bureau studies. We feel that the suggestion to mark wire lengths on caps is unnecessary since wire lengths are readily measureable.

(Sec. 181.109)

Technical, Clarifying and Conforming Changes

Definitions. Numerous comments were submitted concerning clarification of definitions proposed in the section on meaning of terms (Sec. 181.11). The definitions we are changing as a result of comments are discussed below:

1. Artificial barricade.—Several commenters felt that the definition as proposed was too limited and that there is a need to list specific alternatives, such as timbers measuring 12 inches by 12 inches, concrete, or large concrete blocks filled with sand. The Bureau agrees that other artificial barricades may provide equivalent protection, but rather than list specific types of barricade construction, we are now

amending the definition to permit other alternatives to be approved.

2. Barricaded.—A suggestion was made to clarify the definition as proposed. The Bureau accepted this suggestion and rewrote the definition for clarity.

3. Blasting agent.—Several comments were submitted concerning this definition. One suggested deleting the phrase "is not bullet-sensitive" from the definition since the phrase is not in the statutory definition of blasting agent. We are adopting this suggestion to conform to the language and eliminate confusion. A number of comments suggested amending the proposed composition for the number 8 test equivalent strength cap to conform to the currently recognized specifications. We agree and are adopting the more recent specifications now recognized by other Federal agencies and the explosives industry. Another comment suggested separating the definition of a number 8 test blasting cap from the definition of blasting agent. We realize that under the present format it is difficult to locate the definition of a number 8 test blasting cap and we are, therefore, amending the proposed regulations to include a reference to where this definition can be found.

4. Bullet.—Sensitive explosive materials—One commenter suggested the deletion of the last phrase of the proposed definition, reasoning that it was confusing and not necessary. The Bureau agrees and we deleted this definition entirely.

5. Detonator.—Several suggestions were made to add that the term detonator includes, but is not limited to, the examples listed in the definition. Again, the Bureau feels that this clarifies the definition and is also in accordance with statutory language. We are, therefore, amending in this notice the definition as previously proposed.

6. Hardwood.—As association suggested a clarification of a hardwood defect by replacing the term "voids" with "wind shakes" to conform with industry terminology. The Bureau agrees and amends the definition accordingly.

7. Magazine.—Two commentors suggested changing the final word in the definition from "explosives" to "explosive materials". Since the term "explosive materials" is the more encompassing term and is actually what we intended, the Bureau is making this amendment for clarification.

8. Railway.—A suggestion was made to shorten the definition since there was too much unnecessary language in it, causing confusion. The Bureau re-examined the wording and is amending the definition to provide more clarity.

9. Softwood.—(See hardwood comment.)

10. Water gels.—A commenter suggested that we specify in the definition that water gels may be either explosives or blasting agents. The Bureau feels that this is a clarifying action and would also bring the definition more in line with that used by other agencies. We are amending the definition accordingly.

(Sec. 181.11)

Other Changes

Three suggestions were made that would provide clarification to other sections of the proposed regulations. The first suggestion was to replace the word "transaction" with the word "disposition" in Subpart G. The Bureau feels that this would further clarify the records required to be maintained by importers, manufacturers, and dealers by giving a more definite entry date for the the information. Therefore, the proposed regulations are now amended accordingly. The second was to emphasize that all the information required on the records kept under this part must be shown. This was the Bureau's intention and since specification of this will provide more clarification, the proposed regulations are now amended to reflect the change.

The third comment was to clarify that all explosive materials must be kept in locked magazines unless they are being transported to a place for storage or use. The Bureau feels that this suggestion clarifies the Bureau's intent and the previously proposed regulations are amended in this notice.

(Secs. 181.121, 181.122, 181.123, 181.124 and 181.205)

New Proposals in This Notice

1. *Renewals of license or permits.* Under current regulations licenses and permits are renewed annually. This frequent renewal requirement has been considered an administrative burden to both the explosives industry and ATF. This notice proposes to lengthen the renewal period to three years.

(Secs. 181.42, 181.43 and 181.51)

2. *Inventories.* Sections in Subpart G, Records and Reports, currently require licensees to take true and accurate inventories (1) at the time of commencing business; (2) when moving to another region; (3) at the time of discontinuing business; and (4) at any time specified by the regional regulatory administrator. Most licensees take frequent inventories of explosives as part of their normal business procedures. However, it is possible for a licensee to take no physical inventory after commencing business and as a result that licensee is not aware of any discrepancies in his explosives stock. A new requirement is proposed to insure that at least an annual physical inventory is taken, but at the same time keep the burden for licensees to a minimum, especially for those licensees who currently take frequent inventories. The new requirement calls for a physical inventory of explosives at least once a year and if an inventory is taken for reasons other than currently required, the record of that inventory would remain on file for inspection and not be sent to ATF.

(Secs. 181.122, 181.123, 181.124 and 181.125)

3. *Mobile or portable magazines.* The use of mobile or portable magazines by licensees and permittees has increased over the years. The leasing or purchasing of mobile or portable magazines by licensees or permittees from persons not involved with explosives has also increased. As a result, many questions about these magazine requirements have been submitted to the Bureau. This notice proposes to add a new section on the subject of mobile or portable magazines.

(Sec. 181.64)

4. *Adding certain industrial or laboratory chemicals as exemptions.* Subpart H specifies several exemptions from the provisions of Part 181. The exemption in § 181.141(a)(8) is for gasoline, fertilizers, propellant actuated devices, or propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes. Certain industrial or laboratory chemicals are not intended as an explosive material and are similar in this respect to gasoline or fertilizers. Therefore, the proposed regulations add as an exemption industrial or laboratory chemicals which are intended for use as reagents and which are packaged and shipped pursuant to U.S. Department of Transportation regulations in 49 CFR Parts 100 to 177, which do not require explosives hazard warning labels. (E.g., 49 CFR 172.101 and 173.65(d).)

(Sec. 181.141(a)(9))

Public Participation

Interested persons who desire an opportunity to comment orally at a public hearing on these proposed regulations should submit a written request to the Director within the 60 day period. The Director reserves the right to determine if a public hearing will be held.

Written comments or suggestions may be inspected by any person at the ATF Reading Room, Room 4407, Ben Franklin

Post Office Building, 1200 Pennsylvania Avenue NW., Washington, DC, during normal business hours.

Drafting Information

The principal author of this document is James A. Hunt of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Bureau and the Treasury Department participated in developing the regulation in matters of substance and style.

Authority and Issuance

These proposed regulations are to be issued under the authority contained in 18 U.S.C. 847 (84 Stat. 959).

Specific changes to the Regulations

In consideration of the foregoing, 27 CFR Part 181 is proposed to be amended as follows:

1. By amending the table of sections to read as follows:

PART 181—COMMERCE IN EXPLOSIVES

* * * * *

Subpart C—Administrative and Miscellaneous Provisions

* * * * *

Sec.
181.32 Special explosive devices.

Subpart D—Licenses and Permits

Sec.
181.53 * * *
181.54 Change of address.
* * * * *
181.63 Changes in approved magazines.
181.64 Mobile or portable magazines.
* * * * *

Subpart J—Storage

The provisions in this subpart shall apply until November 18, 1981. The provisions in Subpart JJ may be used in lieu of the provisions in this subpart, but shall be mandatory after November 18, 1981.

Sec.
181.181 General.
181.182 Classes of explosive materials.
181.183 Types of magazines.
181.184 Inspection of magazines.
181.185 Movement of explosive materials.
181.186 Location of magazines.
181.187 Construction of type 1 magazines.
181.188 Construction of type 2 magazines.
181.189 Construction of type 3 magazines.
181.190 Construction of type 4 magazines.
181.191 Construction of type 5 magazines.
181.192 Smoking and open flames.
181.193 Quantity and storage restrictions.
181.194 Storage within types 1, 2, 3, and 4 magazines.
181.195 Housekeeping.
181.196 Repair of magazines.
181.197 Lighting.
181.198 American table of distances for storage of explosive materials.
181.199 Table of distances for storage of low explosives.
181.200 Table of recommended separation distances of ammonium nitrate and blasting agents from explosives or other blasting agents.

* * * * *

Subpart JJ—Storage

Note.—The provisions of this subpart may be used in lieu of the provisions in Subpart J, but are mandatory November 17, 1980.

Sec.
181.201 General.
181.202 Classes of explosive materials.
181.203 Types of magazines.
181.204 Inspection of magazines.
181.205 Movement of explosive materials.
181.206 Location of magazines.
181.207 Construction of type 1 magazines.
181.208 Construction of type 2 magazines.
181.209 Construction of type 3 magazines.
181.210 Construction of type 4 magazines.
181.211 Construction of type 5 magazines.
181.212 Smoking and open flames.
181.213 Quantity and storage restrictions.
181.214 Storage within types 1, 2, 3, and 4 magazines.
181.215 Housekeeping.
181.216 Repair of magazines.
181.217 Lighting.
181.218 Table of distances for storage of explosives materials.
181.219 Table of distances for storage of low explosives.
181.220 Table of recommended separation distances of ammonium nitrate and blasting agents from explosives or other blasting agents.

2. By amending § 181.2 to read as follows:

§ 181.2 Relation to other provisions of law.

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in explosive materials. For regulations applicable to commerce in firearms and ammunition, see Part 178 of this chapter. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 179 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 38 of the Arms Export Control Act (22 U.S.C. 2778), and regulations in Part 47 of this chapter and in Parts 121–128 of Title 22, Code of Federal Regulations. For statutes applicable to nonmailable materials, see 18 U.S.C. 1716 and implementing regulations. For statutes applicable to water quality standards, see 33 U.S.C. 1341.

3. By revising § 181.11 to read as follows:

§ 181.11 Meaning of terms.

When used in this part, terms are defined as follows in the section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude other things not named which are in the same general class or are otherwise within the scope of the term defined.

Act. 18 U.S.C. Chapter 40.

Ammunition. Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, and includes percussion caps and 3/32-inch pyrotechnic safety fuses. The term does not include black powder.

Approved storage facility. A place where explosive materials are stored, consisting of one or more approved magazines, conforming to the requirements of this part and covered by a license or permit issued under this part.

Army-type structure. A structure approved by the Department of Defense for the storage of explosive materials.

Artificial barricade. An artificial mound or revetted wall of earth of a minimum thickness of 3 feet, or any other approved barricade that offers equivalent protection.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

Barricaded. The effective screening of a magazine containing explosive materials from another magazine, a building, a railway, or a highway, either by a natural barricade or by an artificial barricade. To be properly barricaded, a straight line from the top of any sidewall of the magazine containing explosive materials to the eave line of any other magazine or building, or to a point 12 feet above the center of a railway or highway, will pass through the natural or artificial barricade.

Blasting agent. Any material or mixture, consisting of fuel and oxidizer, that is intended for blasting and not otherwise defined as an explosive; if the finished product, as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined. A number 8 test blasting cap is one containing 2 grams of a mixture of 80 percent mercury fulminate and 20 percent potassium

chlorate, or a blasting cap of equivalent strength. An equivalent strength cap comprises 0.04–0.45 grams of PETN base charge pressed in an aluminum shell with bottom thickness not to exceed to 0.03 of an inch, to a specific gravity of not less than 1.4 g/cc., and primed with standard weights of primer depending on the manufacturer.

Bureau. The Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Washington, DC.

Business premises. When used with respect to a manufacturer, importer, or dealer, the property on which explosive materials are manufactured, imported, stored or distributed. The premises includes the property where the records of a manufacturer, importer, or dealer are kept if different than the premises where explosive materials are manufactured, imported, stored or distributed. When used with respect to a user of explosive materials, the property on which the explosive materials are received or stored. The premises includes the property where the records of the user are kept if different than the premises where explosive materials are received or stored.

Crime punishable by imprisonment for a term exceeding 1 year. Any offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year. The term does not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices, or (b) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less.

Customs officer. Any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or any agent or other person authorized to perform the duties of an officer of the Customs Service.

Dealer. Any person engaged in the business of distributing explosive materials at wholesale or retail.

Detonator. Any device containing a detonating charge that is used for initiating detonation in an explosive. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating-cord delay connectors, and nonelectric instantaneous and delay blasting caps.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC.

Distribute. To sell, issue, give, transfer, or otherwise dispose of. The term does not include a mere change of possession from a person to his agent or employee in connection with the agency or employment.

District Director. A District Director of Internal Revenue.

Executed under penalties of perjury. Signed with the required declaration under the penalties of perjury as provided on or with respect to the return, form, or other document or, where no form of declaration is required, with the declaration: "I declare under the penalties of perjury that this—(insert type of document, such as, statement, application, request, certificate), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Explosive actuated device. Any tool or special mechanized device which is actuated by explosives, but not a propellent actuated device.

Explosive materials. Explosives, blasting agents, water gels (slurries), and detonators. Explosive materials include, but are not limited to, all items in the List of Explosive Materials provided for in § 181.23.

Explosives. Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and igniters.

Fugitive from justice. Any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term also includes any person who has been convicted of any crime and has fled to avoid imprisonment.

Hardwood. Red Oak, White Oak, Hard Maple, Ash, Hickory, or other equally bullet-resistant hard wood, free from loose knots, wind shakes, or similar defects, having an ambient moisture content less than 15% under normal conditions.

Highway. Any public street, alley, or road.

Importer. Any person engaged in the business of importing or bringing explosive materials into the United States for purposes of sale or distribution.

Indictment. Includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding 1 year may be prosecuted.

Inhabited building. Any building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other structure where people are accustomed to assemble, except any building occupied in connection with the manufacture, transportation, storage, or use of explosive materials.

Internal revenue district. An internal revenue district under the jurisdiction of a District Director of Internal Revenue.

Interstate or foreign commerce. Commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State.

Licensed dealer. A dealer licensed under this part.

Licensed importer. An importer licensed under this part.

Licensed manufacturer. A manufacturer licensed under this part to engage in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

Licensed manufacturer-limited. A manufacturer licensed under this part to engage in the business of manufacturing explosive materials for his own use and not for sale or distribution.

Licensee. Any importer, manufacturer, or dealer licensed under this part.

Magazine. Any building or structure, other than an explosives manufacturing building, used for storage of explosive materials.

Manufacturer. Any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

Manufacturer-limited. Any person engaged in the business of manufacturing explosive materials for his own use and not for sale or distribution.

Mass detonation (mass explosion). Explosive materials mass detonate (mass explode) when a unit or any part of a larger quantity of explosive material explodes and causes all or a substantial part of the remaining material to detonate or explode.

Natural barricade. Natural features of the ground, such as hills, or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the magazine when the trees are bare of leaves.

Number 8 test blasting cap. (See definition of "blasting agent.")

Permittee. Any user of explosives for lawful purpose, who has obtained a user permit under this part.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Plywood. Exterior, construction grade (laminated wood) plywood.

Propellant actuated device. Any tool or special mechanized device or gas generator system which is actuated by a smokeless propellant or which releases and directs work through a smokeless propellant charge.

Railway. Any steam, electric, or other railroad or railway which carries passengers for hire.

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. The principal ATF regional official responsible for administering regulations in this part.

Service Center Director. A director of an internal revenue service center.

Softwood. Douglas fir, pine, or other equally bullet-resistant soft wood, free from loose knots, wind shakes, or similar defects, having an ambient moisture content less than 15% under normal conditions.

State. A State of the United States. The term includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

State of residence. The State in which an individual regularly resides or maintains his home. Temporary stay in a State does not make the State of temporary stay the State of residence.

U.S.C. The United States Code.

User-limited permit. A user permit valid only for a single purchase transaction, a new permit being required for a subsequent purchase transaction.

User permit. A permit issued to a person authorizing him (a) to acquire for his own use explosive materials from a licensee in a State other than the State in which he resides or from a foreign country, and (b) to transport explosive materials in inter-state or foreign commerce.

Water gels (Slurries). A wide variety of explosives and blasting agents. As manufactured, they have varying degrees of sensitivity to initiation. They usually contain substantial proportions of water and ammonium nitrate, some of which are in solution in the water. Some are sensitized by an explosive material, while others contain no explosive ingredient but may be sensitized with metals such as aluminum or with other fuels.

4. By amending § 181.23 to read as follows:

§ 181.23 List of explosive materials.

The Director shall compile and publish in the Federal Register a List of Explosive Materials. The list shall be published and revised at least annually.

5. By amending § 181.26(b) to read as follows:

§ 181.26 Prohibited shipment, transportation, or receipt of explosive materials.

* * * * *

(b) No person may ship or transport any explosive material in interstate or foreign commerce or receive any explosive materials which have been shipped or transported in interstate or foreign commerce who (1) is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to marihuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802), or (4) has been adjudicated as a mental defective or has been committed to a mental institution.

6. By revising § 181.30 to read as follows:

§ 181.30 Reporting theft or loss of explosive materials.

(a) Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 800–424–9555 (nationwide toll free number) and on ATF F 5400.5 (formerly Form 4712) in accordance with the instructions on the form. Theft or loss of any explosive materials shall also be reported to appropriate local authorities.

(b) Any other person, except a carrier of explosive materials, who has knowledge of the theft or loss of any explosive materials from his stock shall, within 24 hours of discovery, report the theft or loss by telephoning 800–424–9555 (nationwide toll free number) and in writing to the nearest ATF office. Theft or loss shall also be reported to appropriate local authorities.

(c) Reports of theft or loss of explosive materials under paragraphs (a) and (b) shall include the following information, if known:

(1) The manufacturer or brand name.

(2) The manufacturer's marks of identification (date and shift code).

(3) Quantity (applicable quantity units, such as pounds of explosives, number of caps, etc.).

(4) Description (dynamite, blasting agents, detonators, etc.).

(5) Size (length and diameter).

(d) A carrier of explosive materials who has knowledge of the theft or loss of any explosive materials shall, within 24 hours of discovery, report the theft or loss by telephoning 800–424–9555 (nationwide toll free number). Theft or loss shall also be reported to appropriate local authorities. Reports of theft or loss of explosive materials by carriers shall include the following information, if known:

(1) The manufacturer or brand name.

(2) Quantity (applicable quantity units, such as pounds of explosives, number of caps, etc.).

(3) Description (Class A, B, or C explosives, or blasting agents, as classified by the U.S. Department of Transportation in the Hazardous Materials Table).

7. By adding a new § 181.32 to read as follows:

§ 181.32 Special explosive devices.

The Director may exempt certain explosive actuated devices, explosive actuated tools, or similar devices from the requirements of this part. A person who desires to obtain an exemption under this section for any special explosive device, which as designed does not constitute a public safety or security hazard, shall submit a written request, in triplicate, to the Director. Each request shall be executed under the penalties of perjury and contain a complete and accurate description of the advice, the name and address of the manufacturer or importer, the purpose of and use for which it is intended, and any photographs, diagrams, or drawings as may be necessary to enable the Director to make his determination. The Director may require that a sample of the device be submitted for examination and evaluation. If it is not possible to submit the device, the person requesting the exemption shall advise the Director of this and designate the place where the device will be available for examination and evaluation.

8. By amending § 181.42 to read as follows:

§ 181.42 License fees.

(a) Each applicant shall pay a fee for obtaining a license, a separate fee being required for each business premises, as follows:

(1) Manufacturer—$50

(2) Manufacturer-limited (nonrenewable)—$5.

(3) Importer—$50.

(4) Dealer—$20.

(b) Each applicant for a renewal of a license shall pay fees for a three year license as follows:

(1) Manufacturer—$25.

(2) Importer—$25.

(3) Dealer—$10.

9. By amending § 181.43 to read as follows:

§ 181.43 Permit fees.

(a) Each applicant shall pay a fee for obtaining a permit as follows:

(1) User—$20.

(2) User-limited (nonrenewable)—$2.

(b) Each applicant for a renewal of a user permit shall pay a fee of $10 for a three year permit.

10. By amending § 181.44 to read as follows:

§ 181.44 License or permit fee not refundable.

No refund of any part of the amount paid as a license or permit fee shall be made where the operations of the licensee or permittee are, for any reason, discontinued during the period of an issued license or permit. However, the license or permit fee submitted with an application for a license or permit shall be refunded if that application is denied, withdrawn, or abandoned, or if a license is cancelled subsequent to having been issued through administrative error.

11. By amending § 181.51 to read as follow:

§ 181.51 Duration of license or permit.

An original license or permit shall be issued for a period of 1 year. A renewal license or permit shall be issued for a period of 3 years. However, a manufacturer-limited license shall be issued for a period of 30 days and a user-limited permit shall be valid only for a single purchase transaction.

12. By revising § 181.54 to read as follows:

§ 181.54 Change of address.

During the term of a license or permit, licensees or permittees may move their business or operations to a new address at which they intend to regularly carry on their business or operations, without procuring a new license or permit. However, in every case, the licensee or permittee shall—

(a) Give notification of the new location of the business or operations to the regional regulatory administrator for the regions from which and to which or the region within which the move is made at least 10 days before the move; and

(b) Submit his license or permit, and any copies furnished with the license or permit, to the regional regulatory administrator for the region to which or within which the move is to be made. The regional regulatory administrator will approve the license or permit, and any copies, to show the new location and the new license or permit number (if any). The approved license or permit, and any copies, will then be returned to the licensee or permittee.

13. By adding a new § 181.63 to read as follows:

§ 181.63 Changes in approved magazines.

(a) *Change in location of magazines.* During the term of a license or permit, a licensee or permittee who intends to change the location of an approved magazine described in his license or permit application (other than a change in location of an approved portable or mobile magazine), shall submit a letter application, in duplicate, to the regional regulatory administrator of the region who issued the license or permit. The letter application shall identify the magazine, including location, type of construction, and class of explosive materials stored within, as prescribed in § 181.182 or § 181.202; and describe the new location. Explosive materials may not be stored at the new location before receipt of a copy of the letter application stamped "Approved."

(b) *Modifications to or changes in construction of magazines.* During the term of a license or permit, a licensee or permittee who intends to make modifications to or changes in construction of approved magazines described in his license or permit application, shall submit a letter application, in duplicate, to the regional regulatory administrator describing the proposed modifications or changes. Explosives materials may not be stored in the magazine before receipt of a copy of the letter application stamped "Approved" and modifications or changes are made.

(c) *Additional magazines.* During the term of a license or permit, a licensee or permittee who intends to acquire additional magazines (excluding portable or mobile magazines previously approved by ATF) not described in the license or permit application, or who intends to construct magazines, shall submit a letter application, in duplicate, to the regional regulatory administrator describing the proposed additional magazines. These magazines may not be used before a receipt of a copy of the letter application stamped "Approved."

(d) *Retention of approved magazine applications.* A licensee or permittee shall retain, as part of records available for examination by ATF officers, any letter application approval for magazines.

14. By adding a new § 181.64 to read as follows:

§ 181.64 Mobile or portable magazines.

a. *General.* A mobile or portable magazine is considered suitable for other than temporary (under 24 hours) storage of explosives if the magazine:

(1) Has been approved by ATF and the notice of approval is posted inside the magazine;

(2) Meets the construction requirements of this part for the explosives stored in the magazine;

(3) Is marked as required by this section; and

(4) Is positioned, when in use, in accordance with the American Table of Distances.

(b) *Application for approval.* The owner, leasee, or othe person in possession of a mobile or portable magazine which has not been previously approved by ATF may obtain approval by submitting a letter application to the regional regulatory administrator of the region in which the magazine is physically located. The letter shall include:

(1) The name, address and telephone number of the person in possession of the magazine;

(2) A description of the magazine (construction, materials used, dimensions); and, if known,

(3) The type and approximate quantity of explosives to be stored in the magazine.

(c) *Marking requirements.* Each mobile or portable magazine shall be marked on the inside as follows:

(1) The name and address (city and State) of the owner, leasee, or other person in possession of the magazine;

(2) The applicable work, "Licensee," "Permittee," or "Nonlicensee," as it relates to the owner, leasee, or other person in possession of the magazine.

(d) *Changes after approval.*

(1) Once a mobile or portable magazine is approved by ATF, a licensee or permittee may rent, lease, borrow, or purchase such magazine without having to obtain further ATF approval. Notice of approval and proof of ownership of a magazine shall be furnished if requested by ATF.

(2) A person in possession of a previously ATF approved mobile or portable magazine may move that magazine to another location without need for another ATF approval.

(3) An explosives licensee or permittee desiring to make construction alterations on an ATF approved magazine shall submit a letter application describing the alternations to the regional regulatory administrator of the region which originally approved the magazine. The altered mobile or portable magazine is not considered suitable for the storage of explosives until the letter application is approved and the magazine is marked as required in this section.

15. By amending § 181.101 to read as follows:

§ 181.101 Posting of license or permit.

A license or permit issued under this part, or copy of a license or permit, shall be posted and available for inspection on the business premises at each place where explosive materials are manufactured, imported, or distributed, and in each magazine of an approved storage facility. The copy of the application accompanying the approved license or permit returned by the regional regulatory administrator shall also be kept available for inspection on the business premises.

16. By amending § 181.103(d) to read as follows:

§ 181.103 Sales or distributions between licensees or between licensees and permittees.

* * * * *

(b) * * * Paragraph (d) of this section applies to those taking possession of explosives materials.

* * * * *

(d) Where possession of explosive materials is transferred at the distributor's premises, the distibutor shall in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing possession. Before the delivery at the distributor's premises of explosive materials to an employee of a licensee or permittee, or to an employee of a carrier transporting explosive materials to a licensee or permittee, the distributor delivering explosive materials shall obtain an executed ATF F 5400.8 (formerly Form 4721) from the employee before releasing the explosive materials. The ATF F 5400.8 shall contain all of the information required on the form and required by this part.

Example 1. An ATF F 5400.8 is required when:

a. An employee of the purchaser takes possession at the distributor's premises.

b. An employee of a carrier hired by the purchaser takes possession at the distributor's premises.

Example 2. An ATF F 5400.8 is not required when:

An employee of the distributor takes possession of the explosives for the purpose of transport to the purchaser.

b. An employee of a carrier hired by the distributor takes possession of the explosives for the purpose of transport to the purchaser.

* * * * *

17. By amending § 181.105(f) to read as follows:

§ 181.105 Distributions to nonlicensees and nonpermittees.

* * * * *

(f) Where the possession of explosive materials is transferred at the distributor's premises, the distributor shall in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing possession. Before the delivery at the distributor's premises of explosive materials to an employee of a nonlicensee or nonpermittee, or to an employee of a carrier transporting explosive materials to a nonlicensee or nonpermittee, the distributor delivering explosive materials shall obtain an executed ATF F 5400.8 from the employee before releasing the explosive materials. The ATF F 5400.8 shall contain all of the information required on the form and by this part. (See examples in § 181.103(d).)

* * * * *

18. By amending § 181.106(c) to read as follows:

§ 181.106 Certain prohibited distributions.

* * * * *

(c) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer shall not distribute any explosive materials to any person knowing or having reason to believe that the person—

(1) Is, except as provided under § 181.142 (d) and (e), under indictment for, or was convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year;

(2) Is a fugitive from justice;

(3) Is an unlawful user of marihuana, or any depressant or stimulant drug, or narcotic drug (as these terms are defined in the Controlled Substances Act; 21 U.S.C. 802); or

(4) Was adjudicated as a mental defective or was committed to a mental institution.

19. By revising § 181.109 to read as follows:

§ 181.109 Identification of explosive materials.

(a) Each licensed manufacturer of explosive materials shall legibly identify by marking, all explosive materials he manufactures for sale or distribution. The marks required by this section shall identify the manufacturer and the location, date, and shift of manufacture. The licensed manufacturer shall place on each cartridge, bag, or other immediate container of explosive materials manufactured for sale or distribution the required mark which shall also be placed on the outside container, if any, used for their packaging.

(b) *Exceptions.*

(1) Licensed manufacturers of blasting caps are only required to place the identification marks prescribed in paragraph (a) on the containers used for the packaging of blasting caps.

(2) The Director may authorize other means of identifying explosive materials upon receipt of a letter application from the licensed manufacturer showing that other identification is reasonable and will not hinder the effective administration of this part.

(3) The Director may authorize the use of other means of identification on fireworks instead of marks prescribed in paragraph (a).

20. By revising § 181.121 to read as follows:

§ 181.121 General.

(a)(1) The records pertaining to explosive materials required by this part shall be commercial invoices, a record book or some other permanent form of record kept in a manner required in this subpart.

(2) The records required by this subpart shall be kept on the business premises for 5 years from the date a transaction occurs or until discontinuance of business or operations by the licensee or permittee. (See also § 181.128 for discontinuance of business or operations.)

(b) ATF officers may enter the premises of any licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee for the purpose of examining or inspecting any record or document required by or obtained under this part (see § 181.24). Section 843(f) of the Act requires licensed importers, licensed manufacturers, licensed manufacturers-limited, licensed dealers, and permittees to make all required records available for examination or inspection at all reasonable times. Section 843(f) of the Act also requires licensed importers, licensed manufacturers, licensed manufacturers-limited, licensed dealers, and permittees to submit all reports and information relating to all required records and their contents, as the regulations in this part prescribe.

(c) Each licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, and permittee shall maintain all records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of explosive materials as the regulations in this part prescribe. Sections 842(f) and 842(g) of the Act make it unlawful for any licensed importer, licensed dealer, or permittee knowingly to make any false entry in, or fail to make entry in,

any record required to be kept under the Act and the regulations in this part.

21. By amending § 181.122 (a), (b) and (c) to read as follows:

§ 181.122 Records maintained by importers.

(a) Each licensed importer of explosive materials shall take true and accurate physical inventories which shall include all explosive materials on-hand required to be accounted for in the records kept under this part. The licensed importer shall take a special inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part; (2) at the time of changing the location of his business to another region; (3) at the time of discontinuing business; and (4) at any time the regional regulatory administrator may in writing require. Each special inventory shall be prepared in duplicate, the original of which shall be submitted to the regional regulatory administrator, and the duplicate shall be retained by the licensed importer. If a special inventory specified by (1) through (4) of this subsection has not been taken during the calendar year, at least one physical inventory shall be taken. However, the record of the yearly inventory, other than a special inventory required by (1) through (4) of this subsection, shall remain on file for inspection instead of being sent to the regional regulatory administrator. (See also § 181.127.)

(b) Each licensed importer shall, not later than the close of the next business day following the date of importation or other acquisition of explosive materials, enter the following information in a separate record:

(1) Date of importation or other acquisition.

(2) Name or brand name of manufacturer and country of manufacture.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of caps, etc.).

(5) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(c) Each licensed importer shall, not later than the close of the next business day following the date of distribution of any explosive materials to another licensee or a permittee, enter in a separate record the information required in § 181.103 (b), (c), and (d) and the following information:

(1) Date of disposition.

(2) Name or brand name of manufacturer and country of manufacture.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of caps, etc.).

(5) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(6) License or permit number of licensee or permittee to whom the explosive materials are distributed.

* * * * *

22. By amending § 181.123 (a), (b), and (c) to read as follows:

§ 181.123 Records maintained by licensed manufacturers.

(a) Each licensed manufacturer shall take true and accurate physical inventories which shall include all explosive materials on-hand required to be accounted for in the records kept under this part. The licensed manufacturer shall take a special inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at any other time the regional regulatory administrator may in writing require. Each special inventory shall be prepared in duplicate, the original of which shall be submitted to the regional regulatory administrator, and the duplicate shall be retained by the licensed manufacturer. If a special inventory required by (1) through (4) of this subsection has not been taken during the calendar year, at least one physical inventory shall be taken. However, the record of the yearly inventory, other than a special inventory required by (1) through (4) of this subsection, shall remain on file for inspection instead of being sent to the regional regulatory administrator. (See also § 181.127.)

(b) Each licensed manufacturer shall, not later than the close of the next business day following the date of manufacture or other acquisition of explosive materials, enter the following information in a separate record:

(1) Date of manufacture or other acquisition.

(2) Name or brand name of product.

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of caps, etc.).

(5) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(c)(1) Each licensed manufacturer shall, not later than the close of the next business day following the date of distribution of any explosive materials to another licensee or a permittee, enter in a separate record the information required in § 181.103(b), (c), and (d) and the following information:

(i) Date of disposition.

(ii) Name and brand name of manufacturer or name of importer, as applicable, if acquired other than by his own manufacture.

(iii) Manufacturer's marks of identification.

(iv) Quantity (applicable quantity units, such as pounds of explosives, number of caps, etc.).

(v) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(vi) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(2) Each licensed manufacturer who manufacturers explosive materials for his own use shall, not later than the close of the next business day following the date of use, enter in a separate record the following information:

(i) Date of use.

(ii) Quantity (applicable quantity units, such as pounds of explosives, number of caps, etc.).

(iii) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

* * * * *

23. By amending § 181.124 (a), (b), (c) and (d) to read as follows:

§ 181.124 Records maintained by dealers.

(a) Each licensed dealer shall take true and accurate physical inventories which shall include all explosive materials on-hand required to be accounted for in the records kept under this part. The licensed dealer shall take a special inventory (1) at the time of commencing business, which shall be the effective date of the license issued upon original qualification under this part; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at any other time the regional regulatory administrator may in writing require. Each special inventory shall be prepared in duplicate, the original of which shall be submitted to the regional regulatory administrator, and the duplicate shall be retained by the licensed dealer. If a special inventory required by (1) through (4) of this subsection has not been taken during the calendar year, at least one physical inventory shall be taken. However, the record of the yearly inventory, other than a special inventory

required by (1) through (4) of this subsection, shall remain on file for inspection instead of being sent to the regional regulatory administrator. (See also § 181.127.)

(b) Each licensed dealer shall, not later than the close of the next business day following the date of purchase or other acquisition of explosive materials (except as provided in paragraph (d) of this section), enter the following information in a separate record:

(1) Date of receipt.

(2) Name or brand name of manufacturer and name of importer (if any).

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of caps, etc.).

(5) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(6) Name, address, and license or permit number of the person from whom the explosive materials are received.

(c) Each licensed dealer shall, not later than the close of the next business day following the date of use or the date of distribution of any explosive materials to another licensee or a permittee (except as provided in paragraph (d) of this section), enter in a separate record the information required in § 181.103 (b), (c), and (d) and the following information:

(1) Date of disposition.

(2) Name and brand name of manufacturer and name of importer (if any).

(3) Manufacturer's marks of identification.

(4) Quantity (applicable quantity units, such as pounds of explosives, number of caps, etc.).

(5) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(6) License or permit number of licensee or permittee to whom the explosive materials are distributed.

(d) When a commercial record is kept by a licensed dealer showing the purchase or other acquisition information required for the permanent record prescribed by paragrpah (b) of this section, or showing the distribution information required for the permanent record prescribed by paragraph (c) of this section, the licensed dealer acquiring or distributing the explosive materials may, for a period not exceeding 7 days following the date of acquisition or distribution of the explosive materials, delay making the required entry into the permanent record of acquisition or distribution. However, until the required entry of acquisition or disposition is made in the permanent record, the commercial record must be (1) kept by the licensed dealer separate from other commercial documents kept by the licensee, and (2) readily available for inspection on the licensed premises.

* * * * *

24. By amending § 181.125 (a) and (c) to read as follows:

§ 181.125 Records maintained by licensed manufacturers-limited and permittees.

(a) Each licensed manufacturer-limited and each permittee shall take true and accurate physical inventories which shall include all explosive materials onhand required to be accounted for in the records kept under this part. The licensed manufacturer-limited or permittee shall take a special inventory (1) at the time of commencing business, which shall be the effective date of the license or permit issued upon original qualification under this part; (2) at the time of changing the location of his premises to another region; (3) at the time of discontinuing business; and (4) at any other time the regional regulatory administrator may in writing require. Each special inventory shall be prepared in duplicate, the original of which shall be submitted to the regional regulatory administrator and the duplicate shall be retained by the licensee or permittee. If a special inventory required by (1) through (4) of this subsection has not been taken during the calender year, a permittee is required to take at least one physical inventory. However, the record of the yearly inventory, other than a special inventory required by (1) through (4) of this subsection, shall remain on file for inspection instead of being sent to the regional regulatory administrator. (See also § 181.127.)

* * * * *

(c)(1) Each permittee shall, not later than the close of the next business day following the date of acquisition of explosive materials, enter the following information in a separate record:

(i) Date of acquisition

(ii) Name or brand name of manufacturer.

(iii) Manufacturer's marks of identification.

(iv) Quantity (applicable quantity units, such as pounds of explosives, number of caps, etc.).

(v) Description (dynamite, blasting agents, detonators, etc.) and size (length and diameter).

(vi) Name, address, and license number of the person from whom the explosive materials are received.

(2) Each permittee shall, not later than the close of the next business day following the date of disposition of surplus explosive materials to another permittee or a licensee, enter in a separate record the information prescribed in § 181.124(c).

* * * * *

25. By amending § 181.127 to read as follows:

§ 181.127 Daily summary of magazine transactions.

In taking inventory required by §§ 181.122, 181.123, 181.124, and 181.125, a licensee or permittee shall enter the inventory in a record of daily transactions to be kept at each magazine of an approved storage facility; however, these records may be kept at one central location on the business premises if separate records of daily transactions are kept for each magazine. Not later than the close of the next business day, each licensee and permittee shall record by manufacturer's name or brand name, the total quantity received in and removed from each magazine during the day, and the total remaining onhand at the end of the day. Any discrepancy which might indicate a theft or loss of explosive materials shall be reported in accordance with § 181.30.

26. By amending § 181.129 to read as follows:

§ 181.129 Exportation.

Explosive materials shall be exported in accordance with the applicable provisions of section 38 of the Arms Export Control Act (22 U.S.C. 2778) and implementing regulations. However, licensed manufacturers, licensed manufacturers, licensed importers, and licensed dealers exporting explosive materials shall maintain records showing the manufacture or acquisition of explosive materials as required by this part and records showing the quantity, the manufacturer's name or brand name of explosive materials, the name and address of the foreign consignee of the explosive materials, and the date the explosive materials were exported.

27. By amending § 181.141(a)(7) and adding (a)(9) to read as follows:

§ 181.141 Exemptions.

(a) *General.* This part shall not apply with respect to:

* * * * *

(7) The importation and distribution of fireworks classifed as Class C explosives and generally known as "common fireworks", as described by U.S. Department of Transportation regulations in 49 CFR 173.100(r), and those Class C explosives described in 49 CFR 173.100 (p), (t), (u), and (x).

* * * * *

(9) Industrial and laboratory chemicals which are intended for use as

reagents and which are packaged and shipped pursuant to U.S. Department of Transportation regulations, 47 CFR Parts 100 to 177, which do not require explosives hazard warning labels.

* * * * *

28. By adding an explanatory note following the heading for Subpart J to read as follows:

Subpart J—Storage

The provisions in this subpart shall apply until November 18, 1981. The provisions in Subpart JJ may be used in lieu of the provisions in this subpart, but shall be mandatory after November 18, 1981.

29. By adding a new Subpart JJ, immediately following Subpart J, to read as follows:

Subpart JJ—Storage

The provisions of this subpart may be used in lieu of the provisions in Subpart J, but are mandatory after November 18, 1981.

§ 181.201 General.

(a) Section 842(j) of the Act and § 181.29 of this part require that the storage of explosive materials by any person must be in accordance with the regulations in this part. The storage standards prescribed by this subpart confer no rights or privileges to store explosive materials in a manner contrary to State or other law.

(b) The Director may authorize alternate construction for explosives storage magazines when it is shown that the alternate magazine construction is substantially equivalent to the standards of safety and security contained in this subpart. Any person intending to use alternate magazine construction shall submit a letter application, in triplicate, to the regional regulatory administrator for transmittal to the Director, specifically describing the proposed magazine. Explosive materials may not be stored in alternate magazines before receipt of a copy of the letter application stamped "Approved."

(c) A licensee or permittee who intends to make modifications to or changes in his approved magazines, or who intends to construct or acquire additional magazines, shall comply with §§ 181.63 and 181.64.

§ 181.202 Classes of explosive materials.

For purposes of this part, there are three classes of explosive materials. These classes, together with the description of explosive materials comprising each class, are as follows:

(a) *High explosives.* Explosive materials which can be caused to detonate by means of a blasting cap when unconfined. (For example, dynamite and detonators.)

(b) *Low explosives.* Explosive materials which can be caused to deflagrate when confined. (For example, black powder; safety fuses; igniters; igniter cords; fuse lighters; and "special fireworks", defined as Class B explosives by U.S. Department of Transportation regulations in 49 CFR 173.88(d).)

(c) *Blasting agents.* (For example, ammonium nitrate-fuel oil and certain water-gels (see also § 181.11).)

§ 181.203 Types of magazines.

For purposes of this part, there are five types of magazines. These types, together with the classes of explosive materials, as defined in § 181.202, which shall be stored in them, are as follows:

(a) *Type 1 magazines.* Permanent magazines for the storage of high explosives, subject to the limitations prescribed by §§ 181.206 and 181.213. Other classes may also be stored in type 1 magazines.

(b) *Type 2 magazines.* Mobile and portable indoor and outdoor magazines for the storage of high explosives, subject to the limitations prescribed by §§ 181.206, 181.206(b), and 181.213. Other classes may also be stored in type 2 magazines.

(c) *Type 3 magazines.* Portable outdoor magazines for the temporary storage of high explosives while attended (for example, a "day-box"), subject to the limitations prescribed by §§ 181.206 and 181.213. Other classes may also be stored in type 3 magazines.

(d) *Type 4 magazines.* Magazines for the storage of low explosives, subject to the limitations prescribed by §§ 181.206(b), 181.210(b), and 181.213. Blasting agents may be stored in type 4 magazines, subject to the limitations prescribed by §§ 181.206(c), 181.211(b), and 181.213. Electric blasting caps that will not mass detonate may also be stored in type 4 magazines, subject to the limitations prescribed by §§ 181.206(a), 181.210(b), and 181.213.

(e) *Type 5 magazines.* Magazines for the storage of blasting agents, and water-gels (slurries) which can be demonstrated to be not cap-sensitive, subject to the limitations prescribed by §§ 181.206(c), 181.211(b), and 181.213.

§ 181.204 Inspection of magazines.

Any person storing explosive materials shall open and inspect his magazines at least every 7 days. This inspection need not be an inventory, but must be sufficient to determine whether there has been unauthorized entry or attempted entry into the magazines, or unauthorized removal of the contents of the magazines.

§ 181.205 Movement of explosive materials.

All explosive materials must be kept in locked magazines meeting the standards in this subpart unless they are—

(a) In the process of manufacture;

(b) Being physically handled in the operating process of a licensee or users;

(c) Being used; or

(d) Being transported to a place of storage or use by a licensee or permittee or by a person who has lawfully acquired explosive materials under § 181.126.

§ 181.206 Location of magazines.

(a) Outdoor magazines in which high explosives are stored shall be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which high explosives are stored, than the minimum distances specified in the table of distances for storage of explosive materials in § 181.218.

(b) Outdoor magazines in which low explosives are stored shall be located no closer to inhabited buildings, passenger railways, public highways, or other magazines in which explosive materials are stored, than the minimum distances specified in the table of distances for storage of low explosives in § 181.219. The distances shown in § 181.219 may not be reduced by the presence of barricades.

(c)(1) Outdoor magazines in which blasting agents in quantities of more than 50 pounds are stored shall be located no closer to inhabited buildings, passenger railways, or public highways than the minimum distances specified in the table of distances for storage of explosive materials in § 181.218.

(2) Ammonium nitrate and magazines in which blasting agents are stored shall be located no closer to magazines in which high explosives or other blasting agents are stored than the minimum distances specified in the table of distances for the separation of ammonium nitrate and blasting agents in § 181.220. However, the minimum distances for magazines in which explosives and blasting agents are stored from inhabited building, etc., may not be less than the distances specified in the table of distances for storage of explosive materials in § 181.218.

§ 181.207 Construction of type 1 magazines.

A type 1 magazine shall be a permanent structure: a building, an igloo or Army-type structure, a tunnel, or a dugout. It shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated.

(a) *Buildings.* All building type magazines shall be constructed of masonry, wood, metal, or a combination of these materials and shall have no openings except for entrances and ventilation. The ground around building magazines shall slope away for drainage or other adequate drainage shall be provided.

(1) *Masonry wall construction.* Masonry wall construction shall consist of brick, concrete, tile, cement block, or cinder block and shall be not less than 6 inches in thickness. Hollow masonry units used in construction shall have all hollow spaces filled with well-tamped, coarse, dry sand or weak concrete (at least a mixture of one part cement and eight parts of sand with enough water to dampen the mixture while tamping in place). Interior walls shall be constructed of, or covered with, a nonsparking material.

(2) *Fabricated metal wall construction.* Metal wall construction shall consist of sectional sheets of steel or aluminum not less than number 14-gauge, securely fastened to a metal framework. Metal wall construction shall be either lined inside with brick, solid cement blocks, hardwood not less than 4 inches thick, or shall have at least a 6-inch sand fill between interior and exterior walls. Interior walls shall be constructed of, or covered with, a nonsparking material.

(3) *Wood frame wall construction.* The exterior of outer wood walls shall be covered with steel or aluminum not less than number 26-gauge. An inner wall of, or covered with, nonsparking material shall be constructed so as to provide a space of not less than 6 inches between the outer and inner walls. The space shall be filled with coarse, dry sand or weak concrete.

(4) *Floors.* Floors shall be constructed of, or covered with, a nonsparking material and shall be strong enough to bear the weight of the maximum quantity to be stored. Use of pallets covered with a nonsparking material is considered equivalent to a floor constructed of, or covered with, a nonsparking material.

(5) *Foundations.* Foundations shall be constructed of brick, concrete, cement block, stone, or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the buildings shall be enclosed with metal.

(6) *Roof.* Except for buildings with fabricated metal roofs, the outer roof shall be covered with no less than number 26-gauge steel or aluminum, fastened to ⅞ inch sheathing.

(7) *Bullet-resistant ceilings or roofs.* Where it is possible for a bullet to be fired directly through the roof and into the magazine at such an angle that the bullet would strike the explosive within, the magazine shall be protected by one of the following methods:

(i) A sand tray lined with a layer of building paper, plastic, or other nonporous material, and filled with not less than 4 inches of coarse, dry sand, shall be located at the tops of inner walls covering the entire ceiling area, except that portion necessary for ventilation.

(ii) A fabricated metal roof shall be constructed of 9/16-inch of plate steel lined with 4 inches of hardwood. (For each additional 1/16-inch of plate steel, the hardwood lining may be decreased 1 inch.)

(8) *Doors.* All doors shall be constructed of ¼-inch plate steel and lined with 2 inches of hardwood. Hinges and hasps shall be attached to the doors by welding, riveting or bolting (nuts on inside of door). They shall be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.

(9) *Locks.* Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks shall have at least five tumblers and a case-hardened shackle of at least 7/16-inches diameter. Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements shall not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(10) *Ventilation.* Ventilation shall be provided to prevent dampness and heating of stored explosive materials. Ventilation openings shall be screened to prevent the entrance of sparks. Ventilation openings in side walls and foundations shall be offset or shielded for bullet-resistant purposes. Magazines having foundation and roof ventilators with the air circulating between the side walls and the floors and between the side walls and the ceiling shall have a wooden lattice lining or equivalent to prevent the packages of explosive materials from being stacked against the side walls and blocking the air circulation.

(11) *Exposed metal.* No sparking material shall be exposed to contact with the stored explosive materials. All ferrous metal nails in the floor and side walls, which might be exposed to contact with explosive materials, shall be blind nailed, countersunk, or covered with a nonsparking lattice work or other nonsparking material.

(b) *Igloos, Army-type structures, tunnels, and duguts.* Igloo, Army-type structure, tunnel, and dugout magazines shall be constructed of reinforced concrete, masonry, metal or a combination of these materials. They shall have an earthmound covering of not less than 24 inches on the top, sides and rear unless the ceiling or roof meets the requirements of paragraph (a)(7) of this section. Interior walls and floors shall be constructed of, or covered with, a nonsparking material. Magazines of this type shall also be constructed in conformity with the requirements of paragraph (a)(4) and paragraphs (a) (8) through (11) of this section.

§ 181.208 Construction of type 2 magazines.

A type 2 magazine shall be a box, trailer, semitrailer, or other mobile facility.

(a) *Outdoor magazines.* (1) *General.* Outdoor magazines shall be bullet-resistant, fire-resistant, weather-resistant, theft-resistant, and ventilated. They shall be supported to prevent direct contact with the ground and, if less than one cubic yard in size, shall be securely fastened to a fixed object. The ground around outdoor magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Exterior construction.* The exterior and covers or doors shall be constructed of ¼ inch steel and shall be lined with two inches of hardwood. Magazines with top openings shall have lids with water-resistant seals or which overlap the sides by at least one inch when in a closed position.

(3) *Hinges and hasps.* Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (V) a

three-point lock. Padlocks shall have at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter. Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(b) *Indoor magazines.* (1) *General.* Indoor magazines shall be fire-resistant and theft-resistant. They need not be bullet-resistant and weather-resistant if the buildings in which they are stored provide protection from the weather and from bullet penetration. No indoor magazine may be located in a residence or dwelling. The indoor storage of high explosives may not exceed a quantity of 50 pounds. More than one indoor magazine may be located in the same building if the magazines are separated by a distance of 10 feet and the total quantity of all explosive materials stored does not exceed 50 pounds. Blasting caps shall be stored in separate magazines (except as provided in § 181.213) and the total quantity of caps may not exceed 5,000.

(2) *Exterior construction.* Indoor magazines shall be constructed of wood or metal according to one of the following specifications:

(i) Wood indoor magazines shall have sides, bottoms, and covers or doors constructed of 2 inches of hardwood and shall be well braced at corners. They shall be covered with sheet metal of not less than number 26-gauge (.0179 inches, based on U.S. Manufacturer's Standards). Nails exposed to the interior of magazines shall be countersunk.

(ii) Metal indoor magazines shall have sides, bottoms, and covers or doors constructed of number 12-gauge (.1046 inches, based on U.S. Manufacturer's Standards) metal and shall be lined inside with a nonsparking material. Edges of metal covers shall overlap sides at least one inch.

(3) *Hinges and hasps.* Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks shall have at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter. Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms that are locked as provided in this paragraph, may have each door or opening locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(c) *Cap boxes.* Magazines for blasting caps in quantities of 100 or less shall have sides, bottoms, and covers or doors constructed of number 12-gauge (.1046 inches, based on U.S. Manufacturer's Standards) metal and lined with a nonsparking material. Hinges and hasps shall be attached so they cannot be removed from the outside. One steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter shall be sufficient for locking purposes.

§ 181.209 Construction of type 3 magazines.

A type 3 magazine shall be a "day-box" or other portable magazine. It shall be fire-resistant, weather-resistant, and theft-resistant. A type 3 magazine shall be constructed of number 12-gauge (.1046 inches, based on U.S. Manufacturer's Standards) steel, lined with either ½-inch plywood or ½-inch Masonite-type hardboard. Doors shall overlap sides by at least one inch. Hinges and hasps shall be attached by welding, riveting or bolting (nuts on inside). A single lock having at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter shall be sufficient for locking purposes. Explosive materials may not be left unattended in type 3 magazines, but must be removed to types 1 or 2 magazines for unattended storage.

§ 181.210 Construction of type 4 magazines.

A type 4 magazine shall be a building, igloo or Army-type structure, tunnel, dugout, box, trailer, or a semitrailer or other mobile magazine.

(a) *Outdoor magazines.* (1) *General.* Outdoor magazines shall be fire-resistant, weather-resistant, and theft-resistant. The ground around outdoor magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Construction.* Outdoor magazines shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. Foundations shall be constructed of brick, concrete, cement block, stone, or metal or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the buildings shall be enclosed with fire-resistant material. The walls and floors shall be constructed of, or covered with, a nonsparking material or lattice work. The doors or covers shall be metal or solid wood covered with metal.

(3) *Hinges and hasps.* Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks shall have at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter. Padlocks shall be protected with ¼-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(b) *Indoor magazines.* (1) *General.* Indoor magazines shall be fire-resistant and theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine may be located in a residence or dwelling. The indoor storage of low explosives may not exceed a quantity of 50 pounds. More than one indoor magazine may be located in the same building if the magazines are separated by a distance of 10 feet and the total quantity of all explosive materials stored does not exceed 50 pounds. Electric blasting caps that will not mass detonate shall be stored in separate magazines and the total number of caps may not exceed 5,000.

(2) *Construction.* Indoor magazines shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. The walls and floors shall be constructed of, or covered with, a nonsparking material.

The doors or covers shall be metal or solid wood covered with metal.

(3) *Hinges and hasps.* Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks shall have at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms that are locked as provided in this paragraph, may have each door or opening locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

§ 181.211 Construction of type 5 magazines.

A type 5 magazine shall be a building, igloo or Army-type structure, tunnel, dugout, bin, box, trailer, or a semitrailer or other mobile facility.

(a) *Outdoor magazines.* (1) *General.* Outdoor magazines shall be weather-resistant and theft-resistant. The ground around magazines shall slope away for drainage or other adequate drainage shall be provided. When unattended, vehicular magazines shall have wheels removed or shall otherwise be effectively immobilized by kingpin locking devices or other methods approved by the Director.

(2) *Construction.* The doors or covers shall be constructed of solid wood or metal.

(3) *Hinges and hasps.* Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside of door). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks shall have at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Trailers, semitrailers, and similar vehicular magazines may, for each door or opening, be locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

(b) *Indoor magazines.* (1) *General.* Indoor magazines shall be theft-resistant. They need not be weather-resistant if the buildings in which they are stored provide protection from the weather. No indoor magazine may be located in a residence or dwelling. Indoor magazines containing quantities of blasting agents in excess of 50 pounds shall be subject to the tables of distances in §§ 181.218 and 181.220 of this subpart.

(2) *Construction.* The doors or covers shall be constructed of wood or metal.

(3) *Hinges and hasps.* Hinges and hasps shall be attached to the covers or doors by welding, riveting, or bolting (nuts on inside). Hinges and hasps shall be installed so that they cannot be removed when the doors are closed and locked.

(4) *Locks.* Each door shall be equipped with (i) two mortise locks; (ii) two padlocks fastened in separate hasps and staples; (iii) a combination of a mortise lock and a padlock; (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks shall have at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter. Padlocks shall be protected with 1/4-inch steel hoods constructed so as to prevent sawing or lever action on the locks, hasps, and staples. Indoor magazines located in secure rooms that are locked as provided in this paragraph, may have each door or opening locked with one steel padlock (which need not be protected by a steel hood) having at least five tumblers and a case-hardened shackle of at least 7/16-inch diameter, if the lock hinges and hasps are securely fastened to the magazine and to the door frame. These requirements do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be actuated from the outside.

§ 181.212 Smoking and open flames.

Smoking, matches, open flames, and similar spark producing devices shall not be permitted—

(a) In any magazine;

(b) Within 50 feet of any outdoor magazine; or

(c) Within a 50-foot line of sight of any indoor magazine.

§ 181.213 Quantity and storage restrictions.

(a) Explosive materials in excess of 300,000 pounds or blasting caps in excess of 20 million may not be stored in one magazine unless approved by the Director.

(b) Blasting caps may not be stored in the same magazine with other explosive materials, except under the following circumstances:

(1) In a type 4 magazine, electric blasting caps that will not mass detonate may be stored with electric squibs, safety fuse, igniters, and igniter cord.

(2) In a type 1 or type 2 magazine, blasting caps may be stored with detonating cord, delay devices, and any of the items listed in paragraph (b)(1) of this section.

§ 181.214 Storage within types 1, 2, 3, and 4 magazines.

(a) Explosive materials within a magazine may not be placed directly against interior walls and shall be stored so as not to interfere with ventilation. To prevent contact of stored explosive materials with walls, a nonsparking lattice work or other nonsparking material may be used.

(b) Containers of explosive materials shall be stored by being laid flat with top sides up. Corresponding Classes (as defined in Department of Transportation (DOT) regulations in 49 CFR Part 173) and brands shall be stored together within a magazine so that brand and DOT Class marks are easily visible upon inspection. Stocks of explosive materials shall be stored so as to be easily counted and checked.

(c) Except with respect to fiberboard or other nonmetal containers, containers of explosive materials may not be unpacked or repacked inside a magazine or within 50 feet of a magazine, and may not be unpacked or repacked close to other explosive materials. Containers of explosive materials shall be securely closed while being stored.

(d) Tools used for opening or closing containers of explosive materials shall be of nonsparking materials, except that metal slitters may be used for opening

fiberboard containers. A wood wedge and a fiber, rubber, or wooden mallet shall be used for opening or closing wood containers of explosive materials. Metal tools other than nonsparking transfer conveyors may not be stored in any magazine containing high explosives.

§ 181.215 Housekeeping.

Magazines shall be kept clean, dry, and free of grit, paper, empty packages and containers, and rubbish. Floors shall be regularly swept. Brooms and other utensils used in the cleaning and maintenance of magazines shall have no spark-producing metal parts, and may be kept in magazines. Floors stained by leakage from explosive materials shall be cleaned according to instructions of the explosives manufacturer. When any explosive material has deteriorated (i.e. if a liquid is leaking from any explosive material) it shall be destroyed in accordance with the advice or instructions of its manufacturer. The area surrounding magazines shall be kept clear of rubbish, brush, dry grass, or trees (except live trees more than 10 feet tall), for not less than 25 feet in all directions. Living foliage which is used to stabilize the earthen covering of a magazine need not be removed. Any other combustible materials shall be kept a distance of not less than 50 feet from outdoor magazines.

§ 181.216 Repair of magazines.

Before repairing the interior of magazines, all explosive materials shall be removed and the interior shall be cleaned. Before repairing the exterior of magazines, all explosive materials shall be removed if there exists any possibility that repairs may produce sparks or flame. Explosive materials removed from magazines under repair shall be (a) placed in other magazines appropriate for the storage of those explosive materials under this subpart, or (b) placed a safe distance from the magazines under repair where they shall be properly guarded and protected until the repairs have been completed.

§ 181.217 Lighting.

(a) Battery-activated safety lights or battery-activated safety lanterns may be used in explosives storage magazines.

(b) Electric lighting used in any explosives storage magazine shall meet the standards prescribed by the current National Electrical Code for the conditions present in the magazine at any time. All electrical switches shall be located outside of the magazine and also meet the standards prescribed by the National Electrical Code.

(c) Copies of invoices, work orders or similar documents which indicate the lighting complies with the National Electrical Code shall be available for inspection by ATF officers.

§ 181.218 Table of distances for storage of explosives materials.

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QUANTITY OF EXPLOSIVES		DISTANCES IN FEET							
		Inhabited Buildings		Public Highways Class A to D		Passenger Railways — Public Highways with Traffic Volume of more than 3,000 Vehicles/Day		Separation of Magazines	
Pounds Over	Pounds Not Over	Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded	Barricaded	Unbarricaded
2	5	70	140	30	60	51	102	6	12
5	10	90	180	35	70	64	128	8	16
10	20	110	220	45	90	81	162	10	20
20	30	125	250	50	100	93	186	11	22
30	40	140	280	55	110	103	206	12	24
40	50	150	300	60	120	110	220	14	28
50	75	170	340	70	140	127	254	15	30
75	100	190	380	75	150	139	278	16	32
100	125	200	400	80	160	150	300	18	36
125	150	215	430	85	170	159	318	19	38
150	200	235	470	95	190	175	350	21	42
200	250	255	510	105	210	189	378	23	46
250	300	270	540	110	220	201	402	24	48
300	400	295	590	120	240	221	442	27	54
400	500	320	640	130	260	238	476	29	58
500	600	340	680	135	270	253	506	31	62
600	700	355	710	145	290	266	532	32	64
700	800	375	750	150	300	278	556	33	66
800	900	390	780	155	310	289	578	35	70
900	1,000	400	800	160	320	300	600	36	72
1,000	1,200	425	850	165	330	318	636	39	78
1,200	1,400	450	900	170	340	336	672	41	82
1,400	1,600	470	940	175	350	351	702	43	86
1,600	1,800	490	980	180	360	366	732	44	88
1,800	2,000	505	1,010	185	370	378	756	45	90
2,000	2,500	545	1,090	190	380	408	816	49	98
2,500	3,000	580	1,160	195	390	432	864	52	104
3,000	4,000	635	1,270	210	420	474	948	58	116
4,000	5,000	685	1,370	225	450	513	1,026	61	122
5,000	6,000	730	1,460	235	470	546	1,092	65	130
6,000	7,000	770	1,540	245	490	573	1,146	68	136
7,000	8,000	800	1,600	250	500	600	1,200	72	144
8,000	9,000	835	1,670	255	510	624	1,248	75	150
9,000	10,000	865	1,730	260	520	645	1,290	78	156
10,000	12,000	875	1,750	270	540	687	1,374	82	164
12,000	14,000	885	1,770	275	550	723	1,446	87	174
14,000	16,000	900	1,800	280	560	756	1,512	90	180
16,000	18,000	940	1,880	285	570	786	1,572	94	188
18,000	20,000	975	1,950	290	580	813	1,626	98	196
20,000	25,000	1,055	2,000	315	630	876	1,752	105	210
25,000	30,000	1,130	2,000	340	680	933	1,866	112	224
30,000	35,000	1,205	2,000	360	720	981	1,962	119	238
35,000	40,000	1,275	2,000	380	760	1,026	2,000	124	248
40,000	45,000	1,340	2,000	400	800	1,068	2,000	129	258
45,000	50,000	1,400	2,000	420	840	1,104	2,000	135	270
50,000	55,000	1,460	2,000	440	880	1,140	2,000	140	280
55,000	60,000	1,515	2,000	455	910	1,173	2,000	145	290
60,000	65,000	1,565	2,000	470	940	1,206	2,000	150	300
65,000	70,000	1,610	2,000	485	970	1,236	2,000	155	310
70,000	75,000	1,655	2,000	500	1,000	1,263	2,000	160	320
75,000	80,000	1,695	2,000	510	1,020	1,293	2,000	165	330
80,000	85,000	1,730	2,000	520	1,040	1,317	2,000	170	340
85,000	90,000	1,760	2,000	530	1,060	1,344	2,000	175	350
90,000	95,000	1,790	2,000	540	1,080	1,368	2,000	180	360
95,000	100,000	1,815	2,000	545	1,090	1,392	2,000	185	370
100,000	110,000	1,835	2,000	550	1,100	1,437	2,000	195	390
110,000	120,000	1,855	2,000	555	1,110	1,479	2,000	205	410
120,000	130,000	1,875	2,000	560	1,120	1,521	2,000	215	430
130,000	140,000	1,890	2,000	565	1,130	1,557	2,000	225	450
140,000	150,000	1,900	2,000	570	1,140	1,593	2,000	235	470
150,000	160,000	1,935	2,000	580	1,160	1,629	2,000	245	490
160,000	170,000	1,965	2,000	590	1,180	1,662	2,000	255	510
170,000	180,000	1,990	2,000	600	1,200	1,695	2,000	265	530
180,000	190,000	2,010	2,010	605	1,210	1,725	2,000	275	550
190,000	200,000	2,030	2,030	610	1,220	1,755	2,000	285	570
200,000	210,000	2,055	2,055	620	1,240	1,782	2,000	295	590
210,000	230,000	2,100	2,100	635	1,270	1,836	2,000	315	630
230,000	250,000	2,155	2,155	650	1,300	1,890	2,000	335	670
250,000	275,000	2,215	2,215	670	1,340	1,950	2,000	360	720
275,000	300,000	2,275	2,275	690	1,380	2,000	2,000	385	770

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Notes.—(1) When two or more storage magazines are located on the same property, each magazine must comply with the minimum distances specified from inhabited buildings, railways, and highways and, in addition, they shall be separated from each other by not less than the distances shown for "Separation of Magazines". However, the quantity of explosives contained in cap magazines shall govern in the spacing of cap magazines from magazines containing other explosives. If any two or more magazines are separated from each other by less than the specified "Separation of Magazines" distances, then the two or more magazines, as a group, must be considered as one magazine. The total quantity of explosives stored in that group must then be treated as if stored in a single magazine located on the site of any magazine of the group, and must comply with the minimum distances from other magazines, inhabited buildings, railways or highways.

(2) All types of blasting caps in strengths through No. 8 cap shall be rated at 1½ lbs. of explosives per 1,000 caps. For strengths higher than No. 8 caps, consult the manufacture.

(3) For quantity and distance purposes, detonating cord of 50 to 60 grains per foot shall be calculated as equivalent to 9 lbs. of high explosives per 1,000 feet. Heavier or lighter core loads shall be rated proportionately.

§ 181.219 Table of distances for storage of low explosives.

Pounds (over)	Pounds (not over)	From inhabited building distance (feet)	From public railroad and highway distance (feet)	From above ground magazine (feet)
(1)	(2)	(3)	(4)	(5)
0	1,000	75	75	50
1,000	5,000	115	115	75
5,000	10,000	150	150	100
10,000	20,000	190	190	125
20,000	30,000	215	215	145
30,000	40,000	235	235	155
40,000	50,000	250	250	165
50,000	60,000	260	260	175
60,000	70,000	270	270	185
70,000	80,000	280	280	190
80,000	90,000	295	295	195
90,000	100,000	300	300	200
100,000	200,000	375	375	250
200,000	300,000	450	450	300

§ 181.220 Table of separation distances of ammonium nitrate and blasting agents from explosives or other blasting agents.[1, 6]

Donor weight		Minimum separation distance of acceptor from donor when barricaded (ft.)[2]		Minimum thickness of artificial barricades (in.)[5]
Pounds over	Pounds not over	Ammonium nitrate[3]	Blasting agent[4]	
	100	3	11	12
100	300	4	14	12
300	600	5	18	12
600	1,000	6	22	12
1,000	1,600	7	25	12
1,600	2,000	8	29	12
2,000	3,000	9	32	15
3,000	4,000	10	36	15
4,000	6,000	11	40	15
6,000	8,000	12	43	20
8,000	10,000	13	47	20
10,000	12,000	14	50	20
12,000	16,000	15	54	25
16,000	20,000	16	58	25
20,000	25,000	18	65	25
25,000	30,000	19	68	30
30,000	35,000	20	72	30
35,000	40,000	21	76	30
40,000	45,000	22	79	35
45,000	50,000	23	83	35
50,000	55,000	24	86	35
55,000	60,000	25	90	35
60,000	70,000	26	94	40
70,000	80,000	28	101	40
80,000	90,000	30	108	40
90,000	100,000	32	115	40
100,000	120,000	34	122	50
120,000	140,000	37	133	50
140,000	160,000	40	144	50
160,000	180,000	44	158	50
180,000	200,000	48	173	50
200,000	220,000	52	187	60
220,000	250,000	56	202	60
250,000	275,000	60	216	60
275,000	300,000	64	230	60

(1) The table specifies separation distances to prevent explosion of ammonium nitrate and ammonium nitrate-based blasting agents by propagation from nearby stores of high explosives or other blasting agents referred to in the Table as the donor. Ammonium nitrate by itself is not considered to be a donor when applying this Table. Ammonium nitrate, ammonium nitrate-fuel oil or combinations of the two are acceptors. If stores of ammonium nitrate are located within the sympathetic detonation distance of explosives or blasting agents, one-half the mass of the ammonium nitrate shall be included in the mass of the donor when calculating separation distances.

(2) When the ammonium nitrate and/or blasting agent is not barricaded, the distances shown in the table shall be multiplied by six. These distances allow for the possibility of high velocity metal fragments from mixers, hoppers, truck bodies, sheet metal structures, metal containers, and the like which may enclose the "donor". Where storage is in bullet resistant magazines recommended for explosives or where the storage is protected by a bullet-resistant wall, distances and barricade thickness in excess of those prescribed in § 181.218 are not required.

(3) The distances in the table apply to ammonium nitrate that passes the insensitivity test prescribed in the definition of ammonium nitrate fertilizer issued by the Fertilizer Institute. Ammonium nitrate failing to pass this test shall be stored at separation distances in accordance with the table in § 181.218.

(4) These distances apply to nitro-carbo-nitrates and blasting agents which pass the insensitivity test prescribed in the U.S. Department of Transportation (DOT) regulations.

(5) Earth dikes, sand dikes or enclosures filled with the required minimum thickness of earth or sand are acceptable artificial barricades. Natural barricades, such as hills or timber of sufficient density that the surrounding exposures which require protection cannot be seen from the "donor" when the trees are bare of leaves are also acceptable.

(6) For determining the distances to be kept from inhabited buildings, passenger railways and public highways, use the table in § 181.218.

Ammonium nitrate, when stored with blasting agents or explosives, may be counted at one-half its actual weight because its blast effect is lower.

Signed: September 25, 1980.

G. R. Dickerson,

Director.

Approved: October 27, 1980.

Richard J. Davis,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 80-35[illegible] Filed 11-17-80; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[A-7-FRL 1672-2]

Designation of Areas for Air Quality Planning Purposes: State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: This document proposes redesignation of Linn County, Iowa (Cedar Rapids), from nonattainment to attainment with respect to the ozone ambient air quality standards. It also proposes reclassification of three nearby counties from unclassifiable to attainment with respect to the ozone air quality standards. A nonattainment designation means that air pollution levels in a certain area are above the ambient air quality standard and that the area is required to develop a plan to attain the standard under Part D of the Clean Air Act. An attainment designation means that air pollution levels are better than the standard while an unclassifiable designation means that sufficient information does not exist to make a determination.

DATE: Public comment should be received by January 19, 1981.

ADDRESS: Public comments should be sent to: Daniel J. Wheeler, Air Support Branch, Environmental Protection Agency, Kansas City, Missouri 64106.

Copies of the state submission and the EPA-prepared evaluation report are available at the above address and at the:

Environmental Protection Agency, Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C.

Iowa Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa.

FOR FURTHER INFORMATION CONTACT: Daniel J. Wheeler, at (816) 374-3791, (FTS) 758-3791.

SUPPLEMENTARY INFORMATION: Section 107 of the Clean Air Act, as amended in 1977, requires all areas of the nation to be designated as attaining the National Ambient Air Quality Standards (NAAQS), as not attaining the NAAQS or as being unclassifiable with respect to attainment for each pollutant for which there is a standard. Attainment/nonattainment designations are recommended by the state and approved or revised as necessary by EPA.

The original designations for the state of Iowa were published in the Federal Register of March 3, 1978 (43 FR 8962), and were codified in the Code of Federal Regulations at 40 CFR 81.316. At that time EPA approved the state's recommendation that Linn County, Iowa, be designated nonattainment on the basis that an ozone monitoring site located in Cedar Rapids exceeded the ozone ambient air quality standard. Buchannan, Delaware, and Jones counties were designated unclassifiable with respect to ozone because they were located downwind of the Linn County nonattainment area.

On October 1, 1980, the Iowa Department of Environmental Quality (DEQ) submitted a redesignation request recommending that these four counties be redesignated to attainment. The basis for this request is that the ozone monitor in Cedar Rapids, on which the original nonattainment designation was based, has not recorded any values in exces of the ozone standard for the last two years. The standard was exceeded only two days in 1978.

The ozone standard, as published on February 8, 1979 (44 FR 8220), and codified at 40 CFR 50.9, is 0.12 part per million (ppm), which is equivalent to 235 micrograms per cubic meter. The standard is attained when the expected number of days per year with maximum hourly average concentrations above 0.12 ppm is equal to or less than one.

The number of expected exceedences is determined by statistical method described in Appendix H of 40 CFR Part 50. This appendix requires analysis of three years of monitoring data, if available. It also provides a method for considering possible exceedences on days when the monitoring equipment was not operating.

The State submitted data shows that the yearly expected exceedances averaged over the most recent three years is less than one per year and, therefore, below the NAAQS for ozone in Cedar Rapids. There are no ozone-monitors in Buchannan, Delaware, and Jones counties. Since their designation was based on the Cedar Rapids designation, the state has requested they be redesignated also.

The Administrator's decision to approve or revise the proposed designations will be based on the comments received and on a determination of whether or not the designations meet the requirements of the Clean Air Act and satisfy the requirements stated in the March 3, 1978, and February 8, 1979, rulemakings.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order, or whether it may follow other specialized development procedures. EPA labels the other regulations "specialized". EPA has determined that this is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This proposal is issued under the authority of Section 107 of the Clean Air Act, as amended. (42 U.S.C. 7407)

Dated: November 6, 1980.

Kathleen Camin,

Regional Administrator.

[FR Doc. 80-35899 Filed 11-17-80; 8:45 am]
BILLING CODE 6560-38-M

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40 CFR Part 123

[SW-1-FRL 1673-8]

Massachusetts Application for Interim Authorization, Phase I, Hazardous Waste Management Program; Public Hearing

AGENCY: Environmental Protection Agency, Region I.

ACTION: Notice of public hearing and public comment period.

SUMMARY: EPA has promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (as amended) to protect human health and the environment from the improper management of hazardous waste. Phase I of the regulations were published in the Federal Register on May 19, 1980 (45 FR 33063).

These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today EPA is announcing the availability for public review of the Massachusetts application for Phase I interim authorization, inviting public comment, and giving notice of a public hearing to be held on the application.

DATE: Comments on the Massachusetts interim authorization application must be received by December 24, 1980.

PUBLIC HEARING: EPA will conduct a public hearing on the Massachusetts interim authorization application at 10:00 a.m. on December 19, 1980. EPA reserves the right to cancel the public hearing if significant public interest in a hearing is not expressed. The State of Massachusetts will participate in the public hearing.

ADDRESSES: Send comments to Gary B. Gosbee, Massachusetts State Coordinator, Waste Management Branch, U.S. EPA, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203.

The public hearing will be held at: University of Massachusetts Medical Center Amphitheater, 55 Lake Avenue, North, Worcester, Massachusetts 01605. Copies of the Massachusetts interim authorization application are available at the following addresses for inspection and copying by the public:

Massachusetts Department of Environmental Quality Engineering, Division of Hazardous Waste, 600 Washington Street, Room 320, Boston, Massachusetts 02111 (telephone (617) 727-5431).

Environmental Protection Agency, Region I Office Library, Room 2100 B, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (telephone (617) 223-5791/4017).

EPA Headquarters Library, Room 2404, 401 M Street, SW., Washington, D.C. 20460.

Written comments and requests to speak at the hearing should be sent to: Gary B. Gosbee, Massachusetts State Coordinator, Waste Management Branch, U.S. EPA, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (telephone (617) 223-1591).

FOR FURTHER INFORMATION CONTACT: Gary B. Gosbee, Massachusetts State Coordinator, Waste Management Branch, U.S. EPA, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (telephone (617) 223-1591).

SUPPLEMENTARY INFORMATION: In the May 19, 1980 Federal Register (45 FR 33063), the Environmental Protection Agency promulgated Phase I of its regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. EPA's Phase I regulations establish, among other things: the initial identification and listing of hazardous wastes; the standards applicable to generators and transporters of hazardous waste, including manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

The May 19 regulations also include provisions under which EPA can authorize qualified State hazardous waste management programs to operate

in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for interim authorization, the State hazardous waste program must, among other things:

(1) Have had enabling legislation in existence prior to August 17, 1980, and,

(2) Be "substantially equivalent" to the Federal program.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 123 Subpart F, (45 FR 33479). The State of Massachusetts has submitted a complete application to EPA for Phase I interim authorization. Copies of the State submittal are available for public inspection and comment as noted above. A public hearing is to be held on the submittal, unless significant public interest is not expressed, as also noted above.

Conduct of Hearing

The hearing is intended to provide an opportunity for interested persons to present their views and submit information for consideration by EPA in the decision whether to grant Massachusetts interim authorization for Phase I of the RCRA program. A panel of EPA employees involved in relevant aspects of the decision will be present to receive the testimony.

The hearing will be informally structured. Individuals providing oral comments will not be sworn in, nor will formal rules of evidence apply. Questions may be posed by panel members to persons providing oral comments; however, no cross-examination by other participants will be allowed.

The State will testify first and present a short overview of the State program. Other commenters will then be called in the order in which their requests were received by EPA. As time allows, persons who did not sign up in advance but who wish to comment on the State's application for Phase I interim authorization will also be given an opportunity to testify. Each organization or individual will be allowed as much time as possible for oral presentation based on the number of requests to participate and the time available for the hearing. As a general rule, in order to ensure maximum participation and allotment of adequate time for all speakers, participants should limit the length of their statements to 10 minutes. The public hearing will be followed, as time permits, by a question and answer session during which participants may pose questions to members of the panel.

Preparation of Transcripts

A transcript of the comments received at the hearing will be prepared. To ensure accurate transcription, participants should provide written copies of their statements to the hearing chairperson. Transcripts will be available upon request from Gary B. Gosbee, Massachusetts State Coordinator, Waste Management Branch, Region I, U.S. Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts 02203 (telephone (617) 223-1591) approximately three days after the hearing at cost.

Major Issues of Interest to EPA

In order for the State program to receive interim authorization, it must be substantially equivalent to the Federal program. EPA is soliciting comments on all aspects of the substantial equivalence of the Massachusetts program to the Federal hazardous waste management program.

EPA would like to receive comments on Massachusetts' provision for public participation in the enforcement process. 40 CFR 123.128(f)(2) requires a state program to provide public participation in the enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action by any citizen having an interest which is or may be adversely affected; or

(2) Assurances that the state will investigate and provide written responses to citizen complaints, not oppose intervention by any citizen where permissive intervention may be authorized by statute rule or regulation, and publish and provide at least 30 days for public comment on any proposed settlement of a state enforcement action.

Massachusetts has chosen the first option by reliance on the authority of Rule 24, the Massachusetts Rules of Civil Procedure, and G. L. c. 30 A sections 1 (3) and 10. EPA is concerned that Massachusetts Rule of Civil Procedure 24(a) may not provide for an adequate right of intervention in civil actions.

EPA solicits comments on this and all other aspects of the substantial equivalence of the Massachusetts program to the Federal Hazardous Waste Management Program.

Dated: November 13, 1980.

William R. Adams, Jr.,

Regional Administrator, Region I.

[FR Doc. 80-35893 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 180

[PH-FRL 1672-6; PP 4F1514/P158]

Polyamide Polymer Derived From Sebacic Acid; Exemption From the Requirement of Tolerance; Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes to delete an inert ingredient from § 180.1001(d) where it is listed without restriction, and to establish § 180.1053 where the inert ingredient will be limited to use as an encapsulating medium for methoprene only.

DATE: Comments must be received on or before December 18, 1980.

ADDRESS: Written comments to: John Shaughnessy, Process Coordination Branch, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-229, 401 M St. SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: John Shaughnessy (202-426-9425). 80P-921.

SUPPLEMENTARY INFORMATION: On January 23, 1975, EPA issued a notice that published in the Federal Regisiter of January 23, 1975 (40 FR 3571) that established exemptions from the requirement of a tolerance for certain inert ingredients in pesticide formulations. Polyamide polymer derived from sebacic acid, vegetable oil acids with or without dimerization, terephthalic acid and/or ethylenediamine was among those inert ingredients and was listed with no limitation as to which pesticide chemicals it may encapsulate. By some error, the limitation to use with methoprene only was omitted.

Recent investigation indicates the polyamide type polymers may extend the life of the active pesticidal ingredient in the formulation. This may cause illegal (over tolerance) residues of the pesticide on a food crop. The Agency has residue data for encapsulated methoprene only. There are no data concerning residues when the polyamide polymer is used to encapsulate other pesticides. Therefore, in order to prevent illegal residues, the Agency now limits the exemption to use

as an encapsulation medium for methoprene only.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains this polyamide polymer may request, on or before December 18, 1980 that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating the document control number, "PP 4F1514/P158." All written comments filed in response to this petition will be available for public inspection in the office of John Shaughnessy from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This proposed rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e))

Dated: November 12, 1980.

Douglas D. Campt,

Director, Registration Division Office of Pesticide Programs.

Therefore, it is proposed that Subpart D of 40 CFR Part 180 be amended as follows:

§ 180.1001 [Amended]

1. By deleting "Polyamide polymer derived from sebacic acid, vegetable oil acids with or without dimerization, terephthalic acid and/or ethylenediamine" from the table under § 180.1001(d).

2. By adding a new § 180.1053 to read as follows:

§ 180.1053 Polyamide polymer derived from sebacic acid; exemption from requirement of tolerance.

Polyamide polymer derived from sebacic acid, vegetable oil acids with or without dimerization, terephthalic acid and/or ethylenediamine is exempted from the requirement of a tolerance when used as an encapsulating medium for methoprene only.

[FR Doc. 80-35895 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-32-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 53 and 57

Discontinuation of Approval of Modifications in Notes, Guaranteed Under Title VI or VII of the Public Health Service Act, Proposed To Permit Use of the Notes as Collateral for Tax-Exempt Financings

AGENCY: Public Health Service, HHS.

ACTION: Proposed rule.

SUMMARY: The Public Health Service proposes to add a new section to regulations for making and guaranteeing loans for construction and modernization of hospitals and medical facilities and to regulations for guaranteeing loans for the construction of teaching facilities for health profession personnel. Under these regulations the Department of Health and Human Services would decline to approve any new proposal to modify the terms of an existing loan guaranteed under Title VI or Title VII of the Public Health Service Act if the proposal would permit use of the guarantee (or guaranteed loan) as collateral for tax exempt financing. These regulations are being proposed because the Secretary believes the continued issuance of these tax exempt bonds could have a detrimental effect on the Federal Government.

DATES: Comments must be received on or before January 19, 1981.

ADDRESS: Written comments may be made to: Florence B. Fiori, Dr. P.H., Director, Bureau of Health Facilities, Center Building, Room 5-22, 3700 East-West Highway, Hyattsville, Maryland 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Fiori (301) 436-7700.

SUPPLEMENTARY INFORMATION: Under the proposed rule set out below, the Secretary of HHS will not approve modifications in the terms of existing loans guaranteed by HHS under Title VI or Title VII of the Public Health Service Act when the modifications are proposed to permit the loans to be used as collateral for an issue of tax-exempt securities. Previously, modifications of the terms of such loans for this purpose have been reviewed and approved (when certain savings were realized by the assisted facility and the Department.) Requests for approval of modifications in the terms of HHS guaranteed loans to permit the use of these loans as collateral for tax-exempt securities have been made because of the requirement in the applicable loan guarantee agreements that the credit and security instruments evidencing the guaranteed loans be in a form "acceptable" to the Secretary. The requests for approval of modifications in the terms of the guaranteed loans focused on reduction of the interest rate and adjustments in the repayment terms.

At the request of the Treasury Department, the Secretary recently conducted a review of this Department's approval standards and practices with respect to the modifications in loan terms proposed to permit collateralization of tax-exempt issues.[1] The Secretary believes that any further approvals of these modifications would not be consistent with the financial interests of the United States.

The basis for this belief is twofold. Treasury Department and Congressional Budget Office officials have asserted [2] that:

(a) The savings to the Federal Government gained by use of a financing mechanism which combines the benefits of a Federal guarantee and tax-exempt status in certain securities do not offset the revenue loss to the Federal Treasury occasioned by the consequent conversion of taxable instruments of tax-exempt securities; and

(b) Because the investment securities created under this procedure would be both federally guaranteed and tax-exempt and therefore superior to other financial instruments that the Federal Government issues, the marketability and costs of other Federal securities would be adversely affected.

Furthermore, the determination to discontinue approval of proposed modifications of guaranteed loans to permit this type of financing is consistent with the legislative history of Title VI of the Public Health Service Act.

[1] While the procedure was studied, a moratorium on approving these "refinancings" was imposed and a notice to that effect was published in the Federal Register on October 15, 1979 [44 FR 59291] which announced that no "refinancing" proposals would be accepted by the Department until further notice. Requests for approval received by the Department prior to October 15, 1979, are now being reviewed under the standards in effect prior to the moratorium, if the proponents of such modifications are still interested in pursuing their respective proposals. When modifications are approved, the respective approvals will allow the proponents one year to carry out the proposed restructuring of their guaranteed loans.

[2] Statement of John M. Samuels, Tax Legislative Counsel, U.S. Department of the Treasury and Statement of Robert D. Reischauer, Deputy Director, Congressional Budget Office, in the report of the hearing before the Subcommittee on Housing and Community Development of the Committee on Banking, Finance and Urban Affairs, U.S. House of Representatives, May 17, 1979, on "HUD guarantee of Tax Exempt Hospital Financing," G.P.O. Serial No. 96-21.

The legislative history of the Title IV (Hill-Burton) loan guarantee program clearly evidences a Congressional intention that loan guarantees (and the accompanying interest subsidies) not be available with respect to securities the interest on which is exempt from Federal income tax, to avoid the creation of tax-exempt securities superior to Treasury's other issues. [Congressional Record (Senate) Daily Ed. April 7, 1970, at pp. S5237 and S5242.] To the extent that the Department's approval of modifications in loan terms would allow a Federal guarantee to be combined with tax-exempt securities, the original Congressional intent with respect to such practices would be frustrated. Because the Congress modeled the Title VII loan guarantee statute on the Title VI statute, we believe that this statement of Congressional intent applies equally to the Title VII program. In addition, Congress has recently confirmed this approach by restricting the use of Federal loan insurance and mortgage guarantees as collateral for tax-exempt financing in Sec. 315 of the Housing and Community Development Amendments of 1979 (Pub. L. 96-153), which amended Sec. 242(d) of the National Housing Act, 12 USC 1715z-7.

Accordingly, proposed rules are set forth below to discontinue approval of proposed modifications in the terms of loans guaranteed under Title VI of VII of the Public Health Service Act (also known, respectively, as the Hill-Burton and Health Professions Educational Assistance Acts) when these modifications are proposed to permit the use of these loans or the Secretary's guarantee as collateral for tax-exempt issues.

Dated: October 14, 1980.

Julius B. Richmond,

Assistant Secretary for Health.

Approved: November 4, 1980.

Patricia Roberts Harris,

Secretary.

1. It is proposed to amend Subpart N of Part 53 of Title 42 of the Code of Federal Regulations by adding the following section:

§ 53.155 Modification of loans.

No official of the Department of Health and Human Services will approve any proposal to modify the terms of a loan guaranteed under Title VI of the Public Health Service Act (42 U.S.C. 291 *et seq.*) which would permit the use of the guaranteed loan (or the guarantee) as collarteral for an issue of tax-exempt securities. This rule does not apply to proposals submitted to the Department on or before October 15, 1979.

(Sections 215 and 621, Public Health Service Act, 58 Stat. 690 and 84 Stat. 344, 42 U.S.C. 216 and 291j-1, as amended)

2. It is also proposed to amend Subpart P of Part 57 of Title 42 of the Code of Federal Regulations by adding the following new section:

§ 57.1518 Modification of loans.

No official of the Department of Health and Human Services will approve any proposal to modify the terms of a loan guaranteed under Title VII of the Public Health Service Act (42 U.S.C. 293 *et seq.*) and this Subpart which would permit the use of the guaranteed loan (or the guarantee) as collateral for an issue of tax-exempt securities. This rule does not apply to proposals submitted to the Department on or before October 15, 1979.

(Sections 215 and 726, Public Health Service Act, 58 Stat. 690 and 85 Stat. 432, 42 U.S.C. 216 and 293i, as amended)

[FR Doc. 80-35983 Filed 11-17-80; 8:45 am]
BILLING CODE 4110-83-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 80-286; FCC 80-546]

Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board

AGENCY: Federal Communications Commission.

ACTION: First Supplemental Notice to initiation of rulemaking.

SUMMARY: The Commission accepts the nomination of state commissioners and appoints them and three Federal Commissioners to the Federal-State Joint Board established in a prior notice of proposed rulemaking to consider revisions to the Jurisdictional Separations Manual. The Commission further defines the applicable *ex parte* rules regarding submission of comments.

ADDRESS: Interested parties may file notices of appearance and intent to participate in the proceeding to Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Francis L. Young, Room 530, (202) 632-4715.

Adopted September 19, 1980.

Released September 25, 1980.

By the Commission: Commissioner Jones concurring in the result.

1. In the *Notice of Proposed Rulemaking and Order Establishing a Joint Board*, FCC80-339, released June 12, 1980 (See 45 FR 41459), we instituted this proceeding to reexamine the allocation of exchange plant investment and associated expenses in the light of the comments filed in the *MTS-WATS Market Structure* proceeding and our Final Decision in the *Second Computer Inquiry* proceeding. We established a Joint Board in accordance with Section 410(c) of the Communications Act. In this First Supplemental Notice we appoint the members of the Joint Board, clarify certain procedural strictures, and provide for generation of a service list so that all parties may be served with all relevant material.

2. The NARUC has submitted the nominations of Richard D. Gravelle, Commissioner, California Public Utilities Commission; Edward B. Hipp, Commissioner, North Carolina Utilities Commission; Edward P. Larkin, Commissioner, New York Public Service Commission; and Edward M. Parsons, Jr., Commissioner, Wisconsin Public Service Commission; to serve as members of the Joint Board. We thank the NARUC for submitting the nominations of these distinguished state commissioners and will appoint them to this Joint Board. We will also appoint Chairman Charles D. Ferris, Commissioner Robert E. Lee and Commissioner Joseph R. Fogarty of this Commission to serve on the Joint Board.

3. As noted in paragraph 32 of the order establishing this Joint Board, Section 221(c) proceedings, except as otherwise provided, are restricted rulemakings and subject to the Commission's *ex parte* rules. Inasmuch as the Joint Board and its staff will prepare a Recommended Decision which will necessarily require an extensive technical record we believe that all parties will be protected if the Joint Board is subject to the *ex parte* rules pertaining to informal rulemaking proceedings [1] until final written submissions or oral presentations are made to the Joint Board. After that time, the *ex parte* rules affecting restricted proceedings will apply to the Joint Board and the Commission.[2]

4. The official record of this proceeding will be maintained by the Secretary, Federal Communications

[1] *Policies and Procedures Regarding Ex Parte Communications During Informal Rulemaking Proceedings*, Gen. Docket No. 78-167, FCC80-334, released June 30, 1980.

[2] Notice will be issued to advise interested persons of the change in status when this proceeding is restricted.

Commission. During the Joint Board phase of this proceeding parties will be required to file the original and appropriate copies of all submissions with the Secretary and a copy with each state commission member of the Board. To facilitate service of all future orders of the Commission and the Joint Board parties may file a notice of appearance and intent to participate at this time. A service list based on such notices will be prepared and distributed by a Commission Public Notice. The service list will also identify mailing addresses for the state commission members and the state staff members appointed by the state commissioners.

5. Accordingly, it is ordered, that Chairman Charles D. Ferris, Commissioner Robert E. Lee and Commissioner Joseph R. Fogarty of the Federal Communications Commission; Commissioner Richard D. Gravelle, California Public Utilities Commission; Commissioner Edward B. Hipp, North Carolina Utilities Commission; Commissioner Edward P. Larkin, New York Public Service Commission and Commissioner Edward M. Parsons, Jr., Wisconsin Public Service Commission ARE APPOINTED to the Federal-State Joint Board convened in this proceeding.

6. It is further ordered, that, pursuant to Section 410(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 410(c), Chairman Charles D. Ferris SHALL serve as Chairman of the Federal-State Joint Board.

7. It is further ordered, That all parties MAY FILE a Notice of Appearance and Intent to Participate with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

8. It is further ordered, That the official record of this proceeding SHALL BE maintained by the Secretary, Federal Communications Commission and available for public inspection pursuant to procedures applicable to all Commission proceedings.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-35917 Filed 11-17-80; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

[Docket No. ERA-R-80-36]

Domestic Crude Oil Entitlements

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of the cancellation of a public hearing on Domestic Crude Oil Entitlements (45 FR 72552, October 31, 1980).

DATES: The public hearing originally scheduled for November 18, 1980, in San Francisco, California is cancelled. The Washington, D.C., hearing remains scheduled for December 3, 1980.

ADDRESS: All comments and requests to speak at the Washington, D.C. hearing should be submited to the Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-80-36, Department of Energy, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Cynthia Ford (Office of Public Hearing Management), Economic Regulatory Administration, Room B-210, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3971.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3971

Daniel J. Thomas (Office of Regulatory Policy), Economic Regulatory Administration, Room 7116, 2000 M Street, N.W., Washington, D.C. 20461, (202) 653-3263

William Funk or Peter Schaumberg (Office of the General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-6754

Issued in Washington, D.C., November 13, 1980.

F. Scott Bush,

Assistant Administrator for Regulatory Policy, Economic Regulatory Administration.

[FR Doc. 80-36128 Filed 11-17-80; 10:22 am]

BILLING CODE 6450-01-M

Notices

Federal Register
Vol. 45, No. 224
Tuesday, November 18, 1980

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Surveys in Manufacturing Area; Determination

In conformity with title 13, United States Code (sections 131, 182, 224, and 225), and with due notice having been published on August 18, 1980 (45 FR 54788), I have determined that annual data to be derived from the surveys listed below are needed to aid the efficient performance of essential governmental functions and have significant application to the needs of the public and industry. The data derived from these surveys, most of which have been conducted for many years, are not publicly available from nongovernmental or other government sources.

Most of the following commodity or product surveys provide data on shipments and/or production; some provide data on stocks, unfilled orders, orders booked, consumption, etc. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys. These surveys have been arranged under major group headings based on the Standard Industrial Classification Manual (1972 edition) promulgated by the Office of Management and Budget for use of Federal statistical agencies.

Major Group 20—Food and Kindred Products

Confectionery

Major Group 22—Textile Mill Products

Broadwoven goods finished
Narrow fabrics
Yarn production
Knit fabric production

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Men's and Boy's Outerwear
Women's and Children's Outerwear
Underwear and Nightwear
Brassieres, corsets, and allied garments
Gloves and mittens

Major Group 24—Lumber and Wood Products, Except Furniture

Hardwood plywood
Softwood plywood
Lumber

Major Group 26—Paper and Allied Products

Pulp, and detailed grades of paper and board

Major Group 27—Printing and Publishing

Selected office products

Major Group 28—Chemicals and Allied Products

Industrial gases
Inorganic chemicals
Pharmaceutical preparations, except biologicals
Sulfuric acid

Major Group 29—Petroleum Refining and Related Industries

Asphalt and tar roofing and siding products

Major Group 30—Rubber and Miscellaneous Plastics Products

Rubber
Plastics products

Major Group 31—Leather and Leather Products

Shoes and slippers (by method of construction)

Major Group 32—Stone, Clay, and Glass

Consumer, scientific, technical, and industrial glassware
Fibrous glass

Major Group 33—Primary Metal Industries

Steel mill products
Insulated wire and cable
Magnesium mill products
Nonferrous castings

Major Group 34—Fabricated Metal Products Except Ordnance, Machinery, and Transportation Equipment

Commercial steel forgings
Steel power boilers
Selected heating equipment
Metal cans

Major Group 35—Machinery, Except Electrical

Internal combustion engines
Tractors, except garden tractors
Farm machines and equipment
Mining machinery and mineral processing equipment
Refrigeration and air-conditioning equipment, including warm air furnaces
Computers and office and accounting machines
Pumps and compressors
Selected industrial air pollution control equipment
Construction machinery
Anti-friction bearings

Major Group 36—Electrical Machinery, Equipment, and Supplies

Radios, televisions, and phonographs
Motors and generators
Wiring devices and supplies
Switchgear, switchboard apparatus, relays, and industrial controls
Transformers
Selected electronic and associated products, including telephone and telegraph apparatus
Electric housewares and fans
Electric lighting fixtures
Major household appliances

Major Group 37—Transportation Equipment

Aircraft propellers

Major Group 38—Professional, Scientific, and Controlling Instruments; Photographic, and Optical Goods; Watches and Clocks

Selected instruments and related products
Atomic energy products and services

The following survey represents an annual supplement of a monthly survey and will cover the same establishments canvassed monthly. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected monthly.

Major Group 32—Stone, Clay, and Glass

Glass containers

The following list of surveys represents annual counterparts of monthly and quarterly surveys which are conducted on a voluntary basis and will cover only those establishments which are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these annual reports will be identical with that of the monthly and quarterly reports.

Major Group 20—Food and Kindred Products

Flour milling products

Major Group 22—Textile Mill Products

Broadwoven fabric (gray)
Consumption of wool and other fibers, and production of tops and noils
Carpet and rugs

Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials

Sheets, pillowcases, and towels

Major Group 25—Furniture and Fixtures

Mattresses and bedsprings

Major Group 26—Paper and Allied Products

Converted flexible packaging products

Major Group 28—Chemicals and Allied Products

Phosphatic fertilizer materials
Paint, varnish, and lacquer

Major Group 30—Rubber and Miscellaneous Products

Plastics bottles

Major Group 32—Stone, Clay, and Glass

Glass containers
Refractories
Clay construction products
Flat glass

Major Group 33—Primary Metal Industries

Nonferrous castings
Iron and steel foundries
Aluminum producers and importers
Titanium ingot, mill products, and castings
Copper controlled materials

Major Group 34—Fabricated Metal Products Except Ordnance, Machinery, and Transportation Equipment

Plumbing fixtures
Steel shipping drums and pails
Closures for containers

Major Group 35—Machinery, Except Electrical

Construction machinery
Metalworking machinery

Major Group 36—Electrical Machinery, Equipment, and Supplies

Fluorescent lamp ballasts
Electric lamps

Major Group 37—Transportation Equipment

Complete aircraft and aircraft engines, except military
Backlog of orders for aircraft, space vehicles, missiles, engines, and selected parts
Truck trailers

The annual survey of manufactures will collect general statistical data such as total value of shipments, shipments by product class, employment, payroll, workhours capital expenditures, cost of materials consumed, gross book value of assets, retirements, and depreciation of fixed assets, rental payments, supplemental labor costs, information on the quantity of fuels used, etc. This survey, while conducted on a sample basis, will cover all manufacturing industries, including data on plants under construction but not yet in operation.

A survey of research and development (R&D) activities will be conducted. The major data to be obtained in this survey will include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D, and, for comparative purposes, the total net sales and receipts and the total employment of the company.

A survey of shipments to the Federal Government is planned to provide information on the impact of Federal procurement on selected industries and geographic areas by Federal Government agencies.

The annual survey on oil and gas will canvass the industry which provides most of the fuel produced in the United States as well as a substantial portion of the hydrocarbon raw material requirements of many industries. The survey will collect information on exploration, development, and production costs; sales volumes and values; drilling activity; and assets in the crude petroleum and natural gas industry.

The annual survey on pollution abatement expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs, capital expenditures, and assets by industry to reduce pollution in its air, water, or solid forms. It will also obtain the costs recovered from abatement activities and quantities of pollutants abated.

The survey of plant capacity will obtain information such as the amount of time a plant is in operation; operating rates as related to preferred levels and practical capacity; and value of production and other statistics for actual, preferred, and practical capacity. operating levels; and the reasons for operating at less than capacity. The survey will be done on a sample basis and will cover all manufacturing industries.

The report forms will be furnished to firms included in these surveys. Copies of survey forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed the annual surveys be conducted for the purpose of collecting the data hereinabove described.

Dated: November 13, 1980.

Vincent P. Barabba,

Director, Bureau of the Census.

[FR Doc. 80-35946 Filed 11-17-80; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

National Marine Fisheries; Permit Modification Request

Notice is hereby given that Dr. Bruce Mate, Oregon State University, has requested a modification to Permit No. 217 which was issued to him under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), on December 27, 1977.

Dr. Mate is requesting authorization to conduct an experiment an acoustical harrassment of harbor seals (*Phoca vitulina*) that are found at a salmon hatchery during salmon runs. The proposal is to project a sound gradient underwater that is above the hearing threshold of fish but within the hearing range of the seals. The seals are free to leave the area at any time they sense discomfort. The sound to be generated is a white noise without biological significance in the 0-1 kilohertz range. If successful this technique will be a non-lethal non-injurious method of dealing with marine mammal/fishery interactions.

Concurrent with the publication of this notice in the Federal Register the Secretary of Commerce is forwarding copies of this request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documentation pertaining to the above modification request is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 98109.

Dated: November 10, 1980.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-35944 Filed 11-17-80; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries; Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to import marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Marine World Africa, USA (P172A).

b. Address: Marine World Parkway, Redwood City, California 94065.

2. Type of Permit: Public Display.

3. Name and Number of Animals: Killer whales (*Orcinus orca*) 2.

4. Type of Request: To capture and import for public display.

5. Location of Activity: Icelandic Waters.

6. Period of Activity: 2 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 12, 1980

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service.

[FR Doc. 80-35845 Filed 11-17-80; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council, its Scientific and Statistical Committee and its Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The North Pacific Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265), its Scientific and Statistical Committee (SSC) and its Advisory Panel (AP) will hold joint and separate meetings. The Council will also meet jointly with the Alaska Board of Fisheries.

DATES: The Council meeting will convene on Wednesday, December 10, 1980, at approximately 9 a.m., and adjourn on Friday, December 12, 1980, at approximately 5 p.m., in the Alaska Room of the Westward Hilton Hotel, Anchorage, Alaska. The Council and Board of Fisheries will jointly take public testimony on Tuesday, December 9, 1980, 9 a.m. to 5 p.m., and also meet formally on Thursday, December 11, 1980, in the Alaska Room. The SSC meeting will convene on Monday, December 8, 1980, at approximately 9 a.m., and adjourn at approximately 5 p.m., at the Council Conference Room, 333 West Fourth Avenue, Anchorage, Alaska. The AP meeting will convene on Monday, December 8, 1980, at approximately 9 a.m., and adjourn at approximately 5 p.m., in the Kenai Room of the Westward Hilton Hotel. These public meetings may be lengthened or shortened depending upon progress on the agenda.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136 DT, Anchorage, Alaska, Telephone: (907) 274–4563

Proposed Agenda

Council

Special Note: Preregistration (except in special or unusual cases) will be required for all public comments which pertain to a specific agenda topic. Preregistration is accomplished by informing the Agenda Clerk as early as possible of the agenda item to be addressed and the time requested. Preregistration and public comment may be scheduled for: C. Old Business: D. New Business: and E. Fishery Management Plans (FMP's).

The following agenda items will be discussed by the Council: A. Call to Order, Approval of Agenda, and Minutes of the Previous Meeting. B. Special Reports. B–1. Executive Director's Report. B–2. Alaska Department of Fish and Game (ADF&G) Report on Domestic Fisheries. B–3. National Marine Fisheries Service (NMFS) Report on Foreign Fisheries. B–4. U.S. Coast Guard (USCG) Report on Enforcement and Surveillance. C. Old Business. C–1. AP and SSC appointments. C–2. Council meeting schedule for 1981. C–3. Policy on closed plan development team (PDT) meetings. D. New Business: D–1. Foreign fishing permits and 1981 allocations. D–2. Other new business as appropriate. E. Fishery Management Plans. E–1. Salmon FMP: no formal action. E–2. Herring FMP; final Council review and approval of FMP to go to Secretarial review. E–3. King Crab FMP: no formal action; draft FMP will be discussed with Alaska Board of Fisheries. E–4. Tanner Crab FMP: discussion and agreement on 1981 amendments with Alaska Board of Fisheries; Council approval of 1981 amendments to go to the Secretary. E–5. Gulf of Alaska Groundfish FMP: consider proposal to close eastern regulatory area to all foreign trawling and approve amendment for public review. E–6. Bering Sea/Aleutian Islands Groundfish FMP: no formal action but 1981 amendment package will be discussed with the Alaska Board of Fisheries and the Council will also discuss a law suit regarding incidental trawl catch of salmon in the Bering Sea. F. Contracts. F–1. SSC and Council final approval of Contract 78–5, "Assessment of Spawning Herring and Capelin Stocks at Selected Coastal Areas in the Eastern Bering Sea"; Contract 79–3, "Troll Salmon Tag Recovery Program"; and Contract 80–6, "A Study to Determine the Applicability of Limited Entry in the Halibut Fishery Off Alaska". F–2. Review and approve request for proposals for a Study of Data on Feeding Habits and Food Requirements of Marine Mammals in the Bering Sea. G. Public Comments. H. Chairperson's Closing Comments and Adjournment.

Scientific and Statistical Committee

Same agenda as Council.

Advisory Panel

Same agenda as Council.

Dated: November 13, 1980.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-36008 Filed 11-17-80; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Fort Leonard Wood Military Reservation and Mark Twain National Forest, Mo.; Order Affecting the Current Use-Permit, Cancellation of Prior Use-Permit, and Establishment of the New Military Boundary of Fort Leonard Wood Military Reservation, Mo.

In accordance with the authorities and requirements of 16 U.S.C. 505a, and by subsequent approval of Disposal Report Number 390 dated 31 May 1974 by the Armed Services Committees of Congress, an interchange of lands was affected between Fort Leonard Wood and Mark Twain National Forest, along with a reduction in the acreage under use-permit to the Department of the Army. Said interchange was published in the Federal Register, Volume 40, Number 106—Monday, June 2, 1975, page 23773. Reduction in the use-permit lands was accomplished by the simultaneous termination of the prior Memorandum Agreement covering 16,041 acres, dated 29 July 1964, Control No. 084–2, and execution of a replacement Memorandum Agreement dated 4 October 1979 covering 9,672 acres. Said agreement was entered into under statutory authority of 16 U.S.C. 505a and 16 U.S.C. 528–531, and the delegated authority of Joint Policy between the Department of the Army and the Department of Agriculture Relating to the Use of National Forest Lands for Defense Purposes, approved by the respective Secretaries on 11 June and 3 July 1951.

The Exhibits which follow describe, respectively: (A) the perimeter description of lands over which the Army has retained use-permits on Department of Agriculture lands; and (B) the new perimeter description of Fort Leonard Wood Military Reservation, Missouri; including said use-permit area.

Accordingly, all lands within said new use permit boundary, Exhibit A, are subject only to the laws applicable to other lands within the Military Reservation (16 U.S.C. 505b); and any lands conveyed to the Department of Agriculture by the exchange, effective 2 June 1975, and those lands released to said Department by the reduction of the area covered under the use-permit effective 4 October 1979, and lying outside of said Military Reservation, Exhibit B, shall be subject only to the laws applicable to Mark Twain National Forest lands.

Effective Date: Order is effective as of 1 January 1981.

Louis W. Prentiss, Jr.,

Major General, USA Commanding.

Exhibit A—Fort Leonard Wood, Mo.

Department of Agriculture Fee Owned Lands, Use Permit to be Retained by Department of the Army

T35N, R11W, Sections 6, 7, 18, 19, and 30: T35N, R12W, Sections 1 and 25, and parts of Sections 12, 13, 24, 26, 35, and 36: T34N, R12W, parts of Sections 1, 2, & 3

Description:

1. Beginning at the northwest corner of Section 5, Township 35 North, Range 11 West of the Fifth Principal Meridian, Pulaski County, Missouri;
2. Thence southerly along the west line of said Section 5 to the southwest corner thereof;
3. Thence continuing southerly along the west line of Section 8 of said township and range to the southwest corner thereof;
4. Thence continuing southerly along the west line of Section 17 of said township and range to the southwest corner thereof;
5. Thence continuing southerly along the west line of Section 20 of said township and range to the southwest corner thereof;
6. Thence continuing southerly along the west line of Section 29 of said township and range to the southwest corner thereof;
7. Thence westerly along the north line of Section 31 of said township and range to the northwest corner thereof;
8. Thence southerly along the west line of said Section 31 to the northeast corner of the E½SE¼ of Section 36, Township 35 North, Range 12 West;
9. Thence westerly along the north line of said E½SE¼ to the northwest corner thereof;
10. Thence southerly along the west line of said E½SE¼ to the southwest corner thereof;
11. Thence westerly along the south line of said Section 36, a distance of 3.47 chains to the northwest corner of the E½ of Lot 7 of the NE¼ of Section 1, Township 34 North, Range 12 West;
12. Thence southerly along the west line of said E½ of Lot 7 of the NE¼ to the southwest corner thereof;
13. Thence easterly along the south line of said E½ of Lot 7 of the NE¼ to the southwest corner thereof;
14. Thence southerly along the east line of said Section 1 to the southeast corner of Lot 1 of said NE¼ to Section 1;
15. Thence westerly along the south line of said Lot 1 of the NE¼ and Lot 1 of the NW¼ of said Section 1 to the southwest corner of said Lot 1 of the NW¼;
16. Thence continuing westerly along the south line of Lot 1 of the NE¼ and Lot 1 of the NW¼ of Section 2 of said township and range to the southwest corner of said Lot 1 of the NW¼;
17. Thence continuing westerly along the south line of Lot 1 of the NE¼ of Section 3 of said township and range, aproximately 2,075 feet to the center of Roubidoux Creek;
18. Thence in a northerly direction downstream along said center of Roubidoux Creek, approximately 600 feet to the west line of said Lot 1 of the NE¼;
19. Thence northely along the west line of said Lot 1 and Lot 2 of said NE¼ to the center of Roubidoux Creek;
20. Thence in a northerly direction downstream along the center of Roubidoux Creek, approximately 6,470 feet to a point on the west line of the E½ of Lot 6 of said NE¼, said point being approximately 2,080 feet south of the northwest corner of said E½ of Lot 6;
21. Thence continuing in an easterly and northwesterly direction downstream along the center of Roubidoux Creek, approximately 1,500 feet to said west line of the E½ of Lot 6;
22. Thence northerly along said west line of the E½ of Lot 6 to a point in the center of Roubidoux Creek, said point being approximately 240 feet south of the northwest corner of said E½ of Lot 6;
23. Thence in a northeasterly direction downstream along the center of Roubidoux Creek to the north line of said Section 3;
24. Thence easterly along the north line of said Section 3 to the northeast corner thereof;
25. Thence continuing easterly along the north line of Section 2 of said township and range, 0.70 chains to the southwest corner of Section 35, Township 35 North, Range 12 West;
26. Thence northerly along the west line of the SW¼SW¼ of said Section 35 to the northwest corner thereof;
27. Thence easterly along the north line of said SW¼SW¼ to the northeast corner thereof;
28. Thence northerly along the west line of the NE¼SW¼ and the SE¼NW¼ of said Section 35 to the northwest corner of said SE¼NW¼;
29. Thence easterly along the north line of said SE¼NW¼ to the northeast corner thereof;

30. Thence northerly along the west line of the NE¼ of said Section 35 to the northwest corner thereof;

31. Thence easterly along the north line of said NE¼ to the southwest corner of the E½E½ of Section 26 of said township and range;

32. Thence northerly along the west line of said E½E½ to the northwest corner thereof;

33. Thence easterly along the north line of said E½E½ to the northeast corner thereof;

34. Thence continuing easterly along the south line of Section 24 of said township and range to the southwest corner of the E½SW¼ of said Section 24;

35. Thence northerly along the west line of said E½SW¼ to the northwest corner thereof;

36. Thence easterly along the north line of said E½SW¼ to the northeast corner thereof;

37. Thence northerly along the west line of the NE¼ of said Section 24 to the northwest corner thereof;

38. Thence continuing north along the west line of the E½ of Section 13 of said township and range to a point at the foot of the hill and on the right (easterly) bank of Roubidoux Creek, said point being 67.73 chains south of the northwest corner of said E½;

39. Thence along the foot of the hill the following courses: N 66° E, 11.5 chains; N 37° E, 16 chains; N 5° E, 13.65 chains; N 30° W, 8 chains; N 65° W, 9 chains; N 40° W, 14 chains to the west line of said E½;

40. Thence north along the west line of said E½, a distance of 15.20 chains to the northwest corner thereof;

41. Thence continuing northerly along the west line of the SE¼ of Section 12 of said township and range to the northwest corner thereof;

42. Thence westerly along the south line of the NW¼ of said Section 12 to the southwest corner thereof;

43. Thence northerly along the west line of said NW¼ of the northwest corner thereof;

44. Thence continuing northerly along the west line of Section 1 of said township and range to the northwest corner thereof;

45. Thence easterly along the north line of said Section 1 to the northeast corner thereof;

46. Thence continuing along the north line of Section 6, Township 35 North, Range 11 West to the northeast corner of said Section 6, being the point of beginning, containing 9,432 acres, more or less.

Revised: August 1, 1978.

T35N, R11W, that part of the W½ of Lots 2 and 1 of the NW¼, and the W½SW¼ of Section 1, and the W½NW¼ of Section 12 lying westerly of the easterly right-of-way line of Decker's Ridge Road:

Description:

1. Beginning at the northwest corner of Section 1, Township 35 North, Range 11 West, Pulaski County, Missouri;

2. Thence easterly along the north line of said Section 1, approximately 470 feet to the easterly right-of-way line of Decker's Ridge Road;

3. Thence in a southwesterly direction along said easterly right-of-way line of Decker's Ridge Road to a point approximately 750 feet south along the Section line and 180 feet east from the northwest corner of said Section 1;

4. Thence in a southeasterly direction along said easterly right-of-way line of Decker's Ridge Road to a point approximately 1,970 feet south and 670 feet east from the northwest corner of said Section 1;

5. Thence in a southerly direction along said easterly right-of-way line of Decker's Ridge Road to a point approximately 2,400 feet south and 680 feet east from the northwest corner of said Section 1;

6. Thence in a southwesterly direction along said easterly right-of-way line of Decker's Ridge Road to a point approximately 1,900 feet north and 460 feet east from the southwest corner of said Section 1;

7. Thence in a southeasterly direction along said easterly right-of-way line of Decker's Ridge Road to a point approximately 490 feet north and 950 feet east from the southwest corner of said Section 1;

8. Thence in a southerly direction along said easterly right-of-way line of Decker's Ridge Road to a point on the south line of said Section 1, said point being approximately 950 feet easterly from the southwest corner of said Section 1;

9. Thence in a southwesterly direction along said easterly right-of-way line of Decker's Ridge Road to a point approximately 500 feet south and 800 feet east from the northwest corner of Section 12, Township 35 North, Range 11 West;

10. Thence in a southwesterly direction along said easterly right-of-way line of Decker's Ridge Road to a point approximately 770 feet south and 350 feet east from the northwest corner of Section 12;

11. Thence in a southwesterly direction along said easterly right-of-way line of Decker's Ridge Road to a point approximately 1210 feet south and 620 feet east from the northwest corner of Section 12;

12. Thence in a southwesterly direction along said easterly right-of-way line of Decker's Ridge Road to a point approximately 1640 feet south and 690 feet east from the northwest corner of Section 12;

13. Thence in a southwesterly direction along said easterly right-of-way line of Decker's Ridge Road to a point approximately 2100 feet south and 1200 feet east from the northwest corner of Section 12;

14. Thence in a southwesterly direction along said easterly right-of-way line of Decker's Ridge Road to a point on the south line of the W½NW¼ of said Section 12, said point being approximately 670 feet easterly from the southwest corner of said W½NW¼;

15. Thence westerly along the south line of said W½NW¼, approximately 670 feet to the southwest corner thereof;

16. Thence northerly along the west line of said Section 12 to the northwest corner thereof;

17. Thence continuing northerly along the west line of said Section 1 to the point of beginning, containing 114.9 acres, more or less.

Revised: October 3, 1978.

T35N, R11W, 125.31 acre parcel in Section 12:

Description:

The S½SE¼ and NW¼SE¼ of Section 12, Township 35 North, Range 11 West, Pulaski County, Missouri, containing 125.31 acres, more or less.

Exhibit B—Perimeter Description of Fort Leonard Wood, Mo.

Description:

1. Beginning at the northeast corner of Section 2, Township 35 North, Range 11 West of the Fifth Principal Meridian, Pulaski County, Missouri;

2. Thence westerly along the north line of said Section 2 to the northwest corner thereof;

3. Thence continuing westerly along the north line of Section 3 of said township and range to the northwest corner thereof;

4. Thence southerly along the east line of Section 4 of said township and range to the northeast corner of Lot 1 of the NE¼ of said Section 4;

5. Thence westerly along the north line of said Lot 1 of the NE¼, and the north line of Lot 1 of the NW¼ of said Section 4 to the southeast corner of the W½E½ of Lot 2 of said NW¼;

6. Thence northerly along the east line of said W½E½ of Lot 2 of the NW¼ to the northeast corner thereof;

7. Thence westerly along the north line of said Section 4 to the northwest corner thereof;

8. Thence continuing westerly along the north line of Section 5 of said

township and range to the northwest corner thereof;

9. Thence continuing westerly along the north line of Section 6 of said township and range to the northwest corner thereof;

10. Thence continuing westerly along the north line of Section 1, Township 35 North, Range 12 West, to the northwest corner thereof;

11. Thence southerly along the west line of said Section 1 to the southwest corner thereof;

12. Thence southerly along the west line of said Section 12 of said township and range to the northwest corner of the SW¼ of said Section 12;

13. Thence easterly along the north line of said SW¼ to the northeast corner thereof;

14. Thence southerly along the east line of said SW¼ to the southeast corner thereof;

15. Thence continuing southerly along the west line of the E½ of Section 13 of said township and range a distance of 15.20 chains to a point at the foot of the hill and on the right (easterly) bank of Roubidoux Creek;

16. Thence along the foot of the hill the following course, S'40° E, 14 chains; S'65° E, 9 chains; S'30° E, 8 chains; S'5° W, 13.65 chains; S'37° W, 16 chains; S'66° W, 11.5 chains to a point on the west line of said E½, said point being 67.73 chains south of the northwest corner of said E½;

17. Thence southerly along the west line of said E½ to the southwest corner thereof;

18. Thence continuing southerly along the west line of the NE¼ of Section 24 of said township and range to the northeast corner of the E½SW¼ of said Section 24;

19. Thence westerly along the north line of said E½SW¼ to the northeast corner thereof;

20. Thence southerly along the north line of said E½SW¼ to the southwest corner thereof;

21. Thence westerly along the south line of said Section 24 to the southwest corner thereof;

22. Thence continuing westerly along the north line of Section 26 of said township and range to the northwest corner of the E½E½ of said Section 26;

23. Thence southerly along the west line of said E½E½ to the southwest corner thereof;

24. Thence westerly along the north line of the NW¼NE¼ of Section 35 of said township and range to the northwest corner thereof;

25. Thence southerly along the west line of said NW¼NE¼ to the southwest corner thereof;

26. Thence westerly along the north line of the SE¼NW¼ to the northwest corner thereof;

27. Thence southerly along the west line of the SE¼NW¼ and NE¼SW¼ of said Section 35 to the southwest corner of said NE¼SW¼;

28. Thence westerly along the north line of the SW¼SW¼ of said Section 35 to the northwest corner thereof;

29. Thence southerly along the west line of said SW¼SW¼ to the southwest corner thereof;

30. Thence westerly along the north line of Section 2, Township 34 North, Range 12 West, 0.70 chains to the northwest corner thereof;

31. Thence continuing westerly along the north line of Section 3 of said township and range, to the center of Roubidoux Creek;

32. Thence in a southwesterly direction upstream along the center of Roubidoux Creek to a point on the west line of the E½ of Lot 6 of the NE¼ of said Section 3, said point being approximately 240 feet south of the northwest corner of said E½ of Lot 6;

33. Thence southerly along said west line of the E½ of Lot 6 to a point in the center of Roubidoux Creek;

34. Thence in a southeasterly and westerly direction upstream along the center of Roubidoux Creek, approximately 1500 feet to a point on the west line of the E½ of Lot 6, said point being approximately 2080 feet south of the northwest corner of said E½ of Lot 6;

35. Thence in a southerly direction upstream along the center of Roubidoux Creek, approximately 6470 feet to the west line of Lot 2 of said NE¼;

36. Thence southerly along the west line of said Lot 2 and Lot 1 of said NE¼ to the center of Roubidoux Creek;

37. Thence in a southeasterly direction upstream along said center of Roubidoux Creek, approximately 600 feet to the south line of said Lot 1 of the NE¼;

38. Thence easterly along the south line of said Lot 1, approximately 2075 feet to the southeast corner thereof;

39. Thence southerly along the east line of the NE¼SE¼ of said Section 3 to the southeast corner thereof;

40. Thence westerly along the south line of said NE¼SE¼ to the southwest corner thereof;

41. Thence southerly along the west line of the SE¼SE¼ of said Section 3 to the southwest corner thereof;

42. Thence continuing southerly along the west line of the E½E½ of Section 10 of said township and range to the southwest corner thereof;

43. Thence westerly along the south line of said Section 10 to the southwest corner thereof;

44. Thence continuing westerly along the north line of the E½ of Section 16 of said township and range to the northwest corner of said E½;

45. Thence southerly along the west line of said E½ to the line between Laclede County and said Pulaski County;

46. Thence continuing southerly along the west line of said E½ to the southwest corner thereof;

47. Thence continuing southerly along the west line of the E½ of Section 21 of said township and range to the southwest corner thereof;

48. Thence continuing southerly along the west line of the E½ of Section 28 of said township and range to the southwest corner thereof;

49. Thence continuing southerly along the west line of the E½ of Section 33 of said township and range to the southwest corner thereof;

50. Thence easterly along the south line of said E½ to the southeast corner thereof;

51. Thence continuing easterly along the south line of Section 34 of said township and range to the northwest corner of the NE¼NE¼ of Section 3, Township 33 North, Range 12 West, Texas County;

52. Thence southerly along the west line of said NE¼NE¼ to the southwest corner of the north 10 acres of said NE¼NE¼;

53. Thence easterly along the south line of said north 10 acres of the NE¼NE¼ to the east line of said Section 3;

54. Thence continuing easterly along the south line of the north 10 acres of the NW¼NW¼ of Section 2 of said township and range to the east line of said NW¼NW¼;

55. Thence northerly along the east line of said NW¼NW¼ to the northeast corner thereof;

56. Thence easterly along the south line of Section 35, Township 34 North, Range 12 West to the southeast corner thereof;

57. Thence continuing easterly along the south line of Section 36 of said township and range to the southeast corner thereof;

58. Thence continuing easterly along the south line of Section 31, Township 34 North, Range 11 West to the southeast corner thereof;

59. Thence northerly along the east line of said Section 31 to the northeast corner thereof;

60. Thence easterly along the south line of Section 29 of said township and range to the southeast corner thereof;

61. Thence northerly along the east line of said Section 29 to the southwest corner of the N½SW¼ of Section 28 of said township and range;

62. Thence easterly along the south line of said N½SW¼ to the southeast corner thereof;

63. Thence northerly along the east line of the W½ of said Section 28 to the southwest corner of the NW¼NE¼ of said Section 28;

64. Thence easterly along the south line of said NW¼NE¼ to the southeast corner thereof;

65. Thence northerly along the east line of said NW¼NE¼ to the northeast corner thereof;

66. Thence easterly along the south line of Section 21 of said township and range to the southeast corner thereof;

67. Thence northerly along the east line of the SE¼ of said Section 21 to the northeast corner of said SE¼.

68. Thence easterly along the south line of the N½ of Section 22 of said township and range to the southeast corner of said N½;

69. Thence continuing easterly along the south line of the SW¼NW¼ of Section 23 of said township and range to the southeast corner of said SW¼NW¼;

70. Thence northerly along the east line of said SW¼NW¼ to the northeast corner thereof;

71. Thence easterly along the south line of the N½N½ of said Section 23 to the southeast corner thereof;

72. Thence northerly along the east line of said N½N½ to the northeast corner thereof;

73. Thence westerly along the south line of Section 14 of said township and range to the center of the right-of-way of Highway TT;

74. Thence in a northerly direction along said center of the right-of-way of Highway TT to the east line of said Section 14;

75. Thence northerly along said east line of Section 14 to the northeast corner thereof;

76. Thence continuing northerly along the east line of Section 11 of said township and range to a point 4.07 chains north of the southeast corner of the NE¼ of said Section 11;

77. Thence westerly, 210 feet;

78. Thence northerly, 290 feet;

79. Thence easterly, 210 feet to a point on the east line of said NE¼, said point being 558.62 feet north of the southeast corner of said NE¼;

80. Thence northerly along the east line of said NE¼ to the northeast corner thereof;

81. Thence continuing northerly along the east line of Section 2 of said township and range to the southwest corner of Lot 7 of the NW¼ of Section 1 of said township and range;

82. Thence easterly along the south line of said Lot 7 of the NW¼, and the south line of Lot 7 of the NE¼ of said Section 1 to the southeast corner of said Lot 7 of the NE¼;

83. Thence southerly along the west line of Lot 7 of the NW¼ of Section 6, Township 34 North, Range 10 West to the southwest corner of said Lot 7;

84. Thence easterly along the south line of said Lot 7 of the NW¼ to the southeast corner thereof;

85. Thence northerly along the east line of said Lot 7 of the NW¼ to the northeast corner thereof;

86. Thence easterly along the south line of Section 31, Township 35 North, Range 10 West to the center of the Big Piney River;

87. Thence in a northeasterly and northwesterly direction downstream along said center of the Big Piney River, approximately 10,700 feet to the north line of Section 32 of said township and range;

88. Thence easterly along the south line of Section 29 of said township and range to the southeast corner thereof;

89. Thence northerly along the east line of the SE¼ of said Section 29 to the northeast corner thereof;

90. Thence easterly along the south line of the N½ of Section 28 of said township and range to the center of the right-of-way of State Highway J;

91. Thence in a northerly direction along said center of the right-of-way of the State Highway J to the north line of said Section 28;

92. Thence continuing in a northerly direction along said center of the right-of-way to the north line of Section 21 of said township and range;

93. Thence westerly along the south line of Section 16 of said township and range to the center of the Big Piney River;

94. Thence in a northerly direction downstream along said center of the Big Piney River, approximately 8400 feet to the north line of Section 17 of said township and range;

95. Thence westerly along the north line of said Section 17 to the northwest corner thereof;

96. Thence continuing westerly along the north line of Section 18 of said township and range to the northwest corner thereof;

97. Thence northerly along the east line of the SE¼SE¼ of Section 12, Township 35 North, Range 11 West to the northeast corner therof;

98. Thence westerly along the north line of said SE¼SE¼ to the northwest corner thereof;

99. Thence northerly along the east line of the NW¼SE¼ of said Section 12, to the northeast corner thereof;

100. Thence westerly along the north line of said NW¼SE¼ to the northwest corner thereof;

101. Thence continuing westerly along the north line of the SW¼ of said Section 12 to a point on the east right-of-way line of Decker's Ridge Road, said point being approximately 670 feet easterly from the northwest corner of said SW¼;

102. Thence in a northeasterly direction along said easterly right-of-way line of Deckers Ridge Road to a point approximately 2100 feet south along the section line and 1200 feet east from the northwest corner of Section 12;

103. Thence in a northwesterly direction along said easterly right-of-way line of Deckers Ridge Road to a point approximately 1640 feet south and 690 feet east from the northwest corner of said Section 12;

104. Thence in a northwesterly direction along said easterly right-of-way line of Deckers Ridge Road to a point approximately 1210 feet south and 620 feet east from the northwest corner of said Section 12;

105. Thence in a northwesterly direction along said easterly right-of-way line of Deckers Ridge Road to a point approximately 770 feet south and 350 feet east from the northwest corner of said Section 12;

106. Thence in a northeasterly direction along said easterly right-of-way line of Deckers Ridge Road to a point approximately 500 feet south and 800 feet east from the northwest corner of said Section 12;

107. Thence in a northeasterly direction along said easterly right-of-way line of Deckers Ridge Road to a point on the north line of said Section 12, said point being approximately 950 feet easterly from the northwest corner thereof;

108. Thence in a northerly direction along said easterly right-of-way line of Deckers Ridge Road to a point approximately 490 feet north and 950 feet east from the southwest corner of Section 1, Township 35 North, Range 11 West;

109. Thence in a northwesterly direction along said easterly right-of-way line of Deckers Ridge Road to a point approximately 1900 feet north and 460 feet east from the southwest corner of said Section 1;

110. Thence in a northeasterly direction along said easterly right-of-way line of Deckers Ridge Road to a point approximately 2400 feet south and 680 feet east from the northwest corner of said Section 1;

111. Thence in a northerly direction along said easterly right-of-way line of Deckers Ridge Road to a point approximately 1970 feet south and 670 feet east from the northwest corner of said Section 1;

112. Thence in a northwesterly direction along said easterly right-of-way line of Deckers Ridge Road to a point approximately 750 feet south and 180 feet east from the northwest corner of said Section 1:

113. Thence in a northeasterly direction along said easterly right-of-way line of Deckers Ridge Road to a point on the north line of said Section 1, said point being approximately 470 feet easterly from the northwest corner thereof;

114. Thence westerly along said north line of Section 1 to the northwest corner thereof, being the point of beginning.

[FR Doc. 80-35836 Filed 11-17-80; 8:45 am]
BILLING CODE 3710-08-M

Shoreline Erosion Advisory Panel; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Shoreline Erosion Advisory Panel.

The meeting will be held in the Conference Room of the Charter House Motor Hotel, 6461 Edsall Road, Alexandria, Virginia, from 0830 hours to 1600 hours on 10 December 1980.

The subjects to be discussed are: Public Information Dissemination; Status of the Final Report of the Shoreline Erosion Advisory Panel on the Program; Discussion of the Overall Program; Plans for Producing Pamphlets; and Video, Tape, and Slide Dissemination of Information on the program to the public.

Public comment is scheduled at 1310 hours. The entire meeting is open to the public subject to the following:

(1) Since seating capacity of the Charter House Motor Hotel Conference Room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

(2) Oral participation by the public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Inquiries and notice of intent to attend the meeting may be addressed to Colonel Ted E. Bishop, Executive Secretary, Shoreline Erosion Advisory Panel, Kingman Building, Fort Belvoir, VA 22060, Telephone: (202) 325-7000.

Dated: November 10, 1980.

Ted E. Bishop,

Colonel, Corps of Engineers, Executive Secretary.

[FR Doc. 80-35892 Filed 11-17-80; 8:45 am]
BILLING CODE 3710-92-M

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 97. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico and possessions of the United States. Bulletin Number 97 is being published in the Federal Register to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 12, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick W. Weiser, 325-9330.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the Federal Register now constitute the only notification of changes in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 97

To the Heads of Executive Departments and Establishments

Subject: Table of Maximum Per Diem Rates in Lieu of Subsistence for United States Government Civilian Officers and Employees for Official Travel in Alaska, Hawaii, the Commonwealth of Puerto Rico and Possessions of the United States

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated August 17, 1966, Subject: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 96 except in the cases identified by an asterisk which rates are effective on the date of this Bulletin. The date of this Bulletin shall be the date the last signature is affixed hereto.

3. Each Department or Establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
*Adak[1]	$12.60
Anaktuvuk Pass	140.00
Anchorage	72.00
Barrow	111.00
Bethel	93.00
College	67.00
Cordova	84.00
Deadhorse	94.00
Dillingham	83.00
Dutch Harbor	82.00
Eielson AFB	67.00
Elmendorf AFB	72.00
Fairbanks	67.00
Fort Richardson	72.00
Fort Wainwright	67.00
Juneau	83.00
Kodiak	84.00
Kotzebue	91.00
Murphy Dome	67.00
Noatak	91.00
Nome	90.00
Noorvik	91.00
Prudhoe Bay	94.00
Shemya AFB[1]	11.00
Shungnak	91.00
Spruce Cape	84.00
Tanana	90.00
Valdez	70.00
Wainwright	79.00
All other localities	71.00
American Samoa	65.00
Guam M.I	69.00
Hawaii	
Oahu	70.00
All other localities	60.00
Johnston Atoll[2]	16.50
*Midway Islands[1]	12.60
Puerto Rico:	
Bayamon:	
12-16—5-15	102.00
5-16—12-15	75.00
Carolina:	
12-16—5-15	102.00
5-16—12-15	75.00
Fajardo:	
12-16—5-15	102.00

Locality	Maximum rate
5-16—12-15	75.00
Fort Buchanan (including GSA service center, Guaynabo):	
12-16—5-15	102.00
5-16—12-15	75.00
Ponce (including Fort Allen NCS)	68.00
Roosevelt Roads:	
12-16—5-15	102.00
5-16—12-15	75.00
Sabana Seca:	
12-16—5-15	102.00
5-16—12-15	75.00
San Juan (including San Juan Coast Guard units):	
12-16—5-15	102.00
5-16—12-15	75.00
All other localities	63.00
Virgin Island of United States:	
12-1—4-30	89.00
5-1—11-30	65.00
*Wake Island:[2]	15.00
Other localities	15.00

[1] Commercial facilities are not available. This per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

November 12, 1980.

M. S. Healy,

OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.

[FR Doc. 80-35858 Filed 11-17-80; 8:45 am]

BILLING CODE 3810-70-M

EDUCATION DEPARTMENT

National Advisory Council on the Education of Disadvantaged Children; Meeting

AGENCY: National Advisory Council on the Education of Disadvantaged Children.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on the Education of Disadvantaged Children. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463, Section 10(a)(2).

DATES: December 3, 1980—10:00 a.m.–4:30 p.m., December 4, 1980—9:00 a.m.–4:30 p.m.

ADDRESS: Specific Location of Meeting to be announced at a later date.

FOR FURTHER INFORMATION CONTACT: Mrs. Lisa Haywood, (202) 724-0114, National Advisory Council on the Education of Disadvantaged Children, Suite 1012, 425-13th Street, NW., Washington, D.C. 20004.

SUPPLEMENTARY INFORMATION: The National Advisory Council on the Education of Disadvantaged Children is established under Section 148 of the Elementary and Secondary Education Act (20 U.S.C. 2852) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

The Full Council meeting will be open to the public.

AGENDA: The proposed agenda includes:

continued discussion of Council's Work Agenda

future plans for Council activities, and reports from Council Committees.

Records shall be kept of all Council proceedings, and shall be available for public inspection at the office of the National Advisory Council on the Education of Disadvantaged Children, 425-13th Street, NW., Suite 10123, Washington, D.C. 20004.

Signed at Washington, D.C. on November 13, 1980.

Alice S. Baum,

Executive Director, National Advisory Council on the Education of Disadvantaged Children.

[FR Doc. 80-35857 Filed 11-17-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Compliance With the National Environmental Policy Act: Extension of Comment Period for Draft Environmental Impact Statement for Mining, Construction, and Operation for a Full-Size Module at the Anvil Points Oil Shale Facility, Rifle, Garfield County, Colo.

AGENCY: Department of Energy.

ACTION: Extension of Comment period on Draft Environmental Impact Statement for Mining, Construction, and Operation for a Full-Size Module at the Anvil Points Oil Shale Facility, Rifle, Garfield County, Colorado.

The Department of Energy (DOE) has issued a draft Environmental Impact Statement, DOE/EIS-0070-D, Mining, Construction, and Operation for a Full-Size Module at the Anvil Points Oil Shale Facility, Rifle, Garfield County, Colorado for public review and comment with a 45-day comment period to end on October 13, 1980, (Federal Register, August 29, 1980, 45 FR 57764). In response to a request for additional time for review, DOE has extended the comment period until November 24, 1980.

Dated at Washington, D.C., this 10 day of November 1980, for the United States Department of Energy.

Ruth C. Clusen,

Assistant Secretary for Environment.

[FR Doc. 80-35846 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Proposed Remedial Orders

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice that the following Proposed Remedial Orders have been issued. These Proposed Remedial Orders allege violations of applicable law as indicated.

A copy of the Proposed Remedial Orders, with confidential information deleted, may be obtained from Thomas M. Holleran, Program Manager for Product Retailers, 2000 M Street, NW, Washington, DC 20461, phone 202/653-3569. On or before December 3, 1980, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street NW, Washington, DC 20461, in accordance with 10 CFR 205.193.

Issued in Washington, DC, on the 12th day of November 1980.

Robert D. Gerring,

Director, Enforcement Program Operations Division, Economic Regulatory Administration.

Proposed Remedial Orders

Station	Address	Date	Violation Amount	Cents per gallon in violation
Northeast District				
Haines-Lincsville Boat Livery	Lincsville, PA 16424	10-21-80	$643.05	28.2
Southeast District				
West Ashley Exxon	2 Savannah Hwy, Charleston, SC 29407	8-11-80	$224.56	1.3
Central District				
John Gray Shell	810 N. Jefferson, St. Louis, MO 63106	1-21-80	$561.49	6.0
Richard's Standard Service	219 South Neltner, West Chicago, IL 60185	10-27-80	3,750.22	3.9
Southwest District				
Mayfield's Country Store	Juno Route, Ozona, TX 76943	9-26-80	$3,923.24	12.9

[FR Doc. 80-35877 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-01-M

LaGloria Oil and Gas Co., a Wholly Owned Subsidiary of Texas Eastern Transmission Corp.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Consent Order and Opportunity for Comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order and provides an opportunity for public comment on the proposed Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: October 30, 1980.

COMMENTS BY: December 18, 1980.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, [Phone] (214) 767-7745.

SUPPLEMENTARY INFORMATION: On October 30, 1980, the Office of Enforcement of the ERA executed a proposed Consent Order with LaGloria Oil and Gas Company, a wholly owned subsidiary of Texas Eastern Corporation of Houston, Texas. Under 10 CFR 205.199J(b), a proposed Consent Order which involves a sum of $500,000 or more in the aggregate, excluding penalties and interest, becomes effective only after the DOE has received comments with respect to the proposed Consent Order. Although the ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

I. Consent Order

LaGloria Oil and Gas Company is a firm engaged in the refining of crude oil and the marketing of propane, motor gasoline and other refined petroleum products, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of sales of propane, motor gasoline and other refined petroleum products, the Office of Enforcement, ERA, and LaGloria Oil and Gas Company entered into a Consent Order, the significant terms of which are as follows:

1. The period covered by the Consent Order was November 1973 through December 1975, the allged overcharges occurred only during the period of August 1974 through July 1975 and included all sales of propane which were made during that period.

2. LaGloria Oil and Gas Company, did not apply in a manner acceptable to the DOE the provisions of 6 CFR Part 150, Subpart L, and 10 CFR Part 212, Subpart E, when determining the prices to be charged for its propane; and, as a consequence, charged prices in excess of the maximum lawful sales prices resulting in overcharges to its customers.

3. In addition to the period specified in I.1 above, the Consent Order covered the DOE allegation that during the period of February 1977 through June 1979, LaGloria had unequally apportioned increased costs between its three grades of gasoline without properly notifying the DOE pursuant to the provisions of 10 CFR 212.83(c)(1)(i)(B).

4. In order to expedite resolution of the disputes involved, the DOE and LaGloria Oil and Gas Company, have agreed to a settlement in the amount of $2,960,915. The terms of the refund consist of a $2,293,905 bank reduction in unrecovered increased general refinery product costs as of December 1975 and $646,614 cash to be refunded within 30 days of the effective date of the Consent Order. The remaining $20,000, representing a compromise of civil penalty, was paid by LaGloria. The negotiated settlement was determined to be in the public interest as well as the best interests of the DOE and LaGloria.

5. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In the Consent Order, LaGloria Oil and Gas Company agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1, and I.3 above, the sum of $2,960,519 in the manner specified in I.4 above. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordane with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants.* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to

other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling (214) 767–7745.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on LaGloria Oil and Gas Company, Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on December 18, 1980. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas, on the 4th day of November 1980.

Herbert F. Buchanan,

Deputy Southwest District Manager, Economic Regulatory Administration.

[FR Doc. 80-35876 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Claypool Hill Exxon; Revised Proposed Remedial Order

Pursuant to 10 C.F.R. § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Revised Proposed Remedial Order (PRO) which was issued to Claypool Hill Exxon, Claypool Hill, Virginia on November 3, 1980.

This PRO charges Claypool Hill Exxon with selling gasoline in excess of the Maximum Lawful Selling Price in violation of 10 C.F.R. § 212.93. It was determined that Claypool Hill Exxon violated the Federal Energy pricing guidelines by selling above the maximum lawful per gallon selling price by as much as 6.2¢ for Regular Leaded, 7.9¢ for Premium Leaded and 7.2¢ for Regular Unleaded during the period August 1, 1979 to June 17, 1980.

Pursuant to 10 C.F.R. § 205.192, Claypool Hill Exxon is required by the PRO to reduce its prices at the pump to the maximum lawful selling price for these grades to be in compliance with the Federal Energy pricing regulations. Further, Claypool Hill Exxon is required to reduce their prices for these grades of gasoline to effect a refund through rollback procedures until a total of $15,313.28, including interest, is refunded.

A copy of the PRO, with confidential information deleted, may be obtained from James C. Easterday, District Manager of Enforcement, Southeast District, Office of Enforcement, 1655 Peachtree Street, N.E., Atlanta, Georgia 30367, Telephone number (404) 881–2396. Within 15 days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 C.F.R. § 205.193.

Issued in Atlanta, Georgia, on the 10th day of November 1980.

Bernard Sleischer,

Acting District Manager.

Concurrence:

Susan Tate,

Acting Chief Enforcement Counsel.

[FR Doc. 80-35932 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-01-M

Howard's Exxon; Proposed Remedial Order

Pursuant to 10 CFR § 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order (PRO) which was issued to Howard's Exxon, Jacksonville, Florida on November 4, 1980.

This PRO charges Howard's Exxon with selling gasoline in excess of the Maximum Lawful Selling Price in violation of 10 CFR § 212.93. It was determined that Howard's Exxon violated the Federal Energy pricing guidelines by selling above the maximum lawful per gallon selling price in the amount of 1.0¢ for Regular Leaded, Premium Leaded and Regular Unleaded during the period June 8, 1980 through July 15, 1980.

Pursuant to 10 CFR § 205.192, Howard's Exxon is required by the PRO to reduce its prices at the pump to the maximum lawful selling price for these grades to be in compliance with the Federal Energy pricing regulations. Further, Howard's Exxon is required to reduce their prices for these grades of gasoline to effect a refund through rollback procedures until a total of $195.35, including interest, has been refunded.

A copy of the PRO, with confidential information deleted, may be obtained from James C. Easterday, District Manager of Enforcement, Southeast District, Office of Enforcement, 1655 Peachtree Street, N.E., Atlanta, Georgia 30367, Telephone number (404) 881–2396. Within 15 days of publication of this Notice, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington D.C. 20461, in accordance with 10 CFR § 205.193.

Issued in Atlanta, Georgia, on the 10th day of November 1980.

Bernard Sleischer,

Acting District Manager.

Concurrence:

Susan Tate,

Acting Chief Enforcement Counsel.

[FR Doc. 80-35891 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER81-84-000]

Alabama Power Co.; Filing

November 12, 1980.

Take notice that Alabama Power Company (Alabama) on October 29, 1980, tendered for filing revised Informational Schedules B–1, C–1, D–1, E–1 and F–1 to the Agreement dated August 28, 1980 between Alabama Power and Alabama Electric Cooperative, Inc. (AEC) for Transmission Service to Distribution Cooperative Members of AEC (the Agreement). The revised Informational Schedules C–1, D–1 and E–1 show revised charges for transmission service under the Agreement and results from operation of the formulary rates contained in the subject Agreement. Revised Informational Schedule B–1 reflects changes in the percentage capacity and energy losses for application in calendar year 1981 based on the most recent loss data to Alabama Power's system.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 28, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35964 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP78-123]

Alaskan Northwest Natural Gas Transportation Co.; Filing of Notice of Amendment to Partnership Agreement

November 12, 1980.

Take notice that on October 27, 1980, Alaskan Northwest Natural Gas Transportation Company (Alaskan Northwest), P.O. Box 1526, Salt Lake City, Utah 84110, a partnership formed under the laws of New York for the construction and operation of the Alaska Natural Gas Transportation System (ANGTS), filed in Docket No. CP78-123 pursuant to the Alaska Natural Gas Transportation Act and the Natural Gas Act notice of amendment to the partnership agreement for the purpose of admitting new partners, all as more fully set forth in the notice which is on file with the Commission and open to public inspection.

Alaskan Northwest states that Columbia Alaskan Gas Transmission Corporation, an affiliate of Columbia Gas Transmission Corporation (Columbia Alaskan), Tetco Four, Inc., an affiliate of Texas Eastern Transmission Corporation and Transwestern Pipeline Company, Texas Gas Alaskan Corporation, an affiliate of Texas Gas Transmission Corporation, and TransCanada Pipeline Alaska Ltd., an affiliate of TransCanada Pipelines Limited have been admitted to the partnership as of August 1, 1980. It is stated that the admission of the above four companies is in response to an offer of partnership in a filing dated February 6, 1980, which filing concerned the admission of American Natural Alaskan Company (American Natural Alaskan).

Alaska Northwest states that in addition to the terms applicable to American Natural Alaskan, the four new partners agreed that their admission would be conditioned upon (1) Commission approval of the thirty-day grace period as tendered in the February 6, 1980, filing, (2) Commission approval of Amendment No. 3, and (3) an understanding that Section 4.3.1 of the Partnership Agreement is not intended to require, and would not be construed to require, any partner to assume a partnership interest greater than that interest elected under Section 4.3.1 of the Partnership Agreement. Furthermore, it is stated, Columbia Alaskan's admission would be conditioned on a waiver both of the last sentence of Section 3.6 and of Section 11.1.4 of the Partnership Agreement, and on the receipt by Columbia Alaskan of approval of admission by the Securities and Exchange Commission. Alaskan Northwest states that the admissions to the partnership are desirable for the financing of the ANGTS as they broaden the base of equity support, spread the risk of the current investment, and commit greater resources to the project.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again. Interested persons are invited to submit written comments on this proposal to the Office of the Secretary.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35965 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RA79-4, RA79-22, RA80-44, RA81-1-000]

Arizona Fuels Corp.; Order Consolidating Proceedings

Issued November 7, 1980.

On June 2, 1980 Arizona Fuels Corporation (Arizona Fuels) filed a motion for consolidation of Docket Nos. RA79-4, RA79-22, and RA80-44, involving review of three decisions and orders of Department of Energy (DOE) denying adjustment relief. On October 2, 1980 Arizona Fuels moved to consolidate Docket No. RA81-1-000 with the three other dockets. DOE concurs with the motions to consolidate.

Docket No. RA79-4 involves review of a DOE order that granted in part and denied in part an exception to Arizona Fuels from entitlements purchase obligations under Section 211.67 of the Mandatory Petroleum Allocation Regulations, 10 CFR 211.67, for the period May-October 1977. The partial denial was based on Arizona Fuels' projected operating and financial results for its fiscal year 1977 (November 1, 1976-October 31, 1977). Docket No. RA81-1-000 is an appeal of a DOE order that rescinded in part relief granted for Arizona Fuels' fiscal years 1976 and 1977 and was based on actual operating results for those years. Docket No. RA79-22 is an appeal of an order granting partial relief from entitlements purchases for fiscal year 1978 based on financial projections for that period. The fourth case, Docket No. RA80-44, is an appeal of an order denying any relief from entitlements for October 1978-April 1979. DOE declined to apply its general standard for entitlements exception and denied relief on equitable grounds.

Under Section 1.20(b) of the Commission's Rules of Practice and Procedure, the Commission may order proceedings involving a common question of law or fact to be consolidated for hearing of any or all matters at issue. Docket Nos. RA79-4, RA79-22, RA81-1-000 and RA80-44 involve issues of law and fact concerning Arizona Fuels' financial status and application of DOE's standard for entitlements exception relief. Docket Nos. RA79-4 and RA81-1-000 cover overlapping time periods. Consolidation of these dockets would permit the Commission to address more efficiently the issues raised by Arizona Fuels.

The Commission orders: (A) Pursuant to Section 1.20(b) of the Commission's Rules of Practice and Procedure, the request by Arizona Fuels Corporation to consolidate the proceedings in Docket Nos. RA79-4, RA79-22, RA80-44 and RA81-1-000 is granted and the proceedings are consolidated for hearing and decision on all matters at issue.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35982 Filed 11-17-80 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3462]

Cascade Waterpower Development Corp.; Application for Preliminary Permit

November 12, 1980.

Take notice that Cascade Waterpower Development Corporation (Applicant) filed on September 12, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for proposed Project No. 3462 to be known as Three Mile Falls Diversion Dam Project

located on the Umatilla River in Umatilla County, Oregon. The proposed project lies wholly on lands owned by the U.S. Water and Power Resources Service (WPRS). Correspondence with the Applicant should be directed to: Mr. David Holzman, P.O. Box 246, June Lake, California 93529.

Project Description—The proposed project would consist of: a penstock through the existing WPRS 24-foot high, concrete multiple arch Three Mile Falls Diversion Dam, a powerhouse, and transmission line. The project would utilize excess irrigation water.

Purpose of Project—Applicant intends to market the power generated by the project to local public utilities.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time it would conduct studies and surveys, perform preliminary designs, quantity and cost estimates, and a feasibility analysis, conduct environmental studies and assessments, and prepare an FERC license application. No new roads are required to complete the studies.

The estimated cost of the work to be performed under the preliminary is $50,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose to a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 21, 1981 either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 23, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petition to intervene must be received on or before January 21, 1981.

Filing and Service of Responsive Documents—Any comments, notices, of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3462. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Application Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., N.W., Wash., D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,
Secretary.

[FR Doc. 80-35966 Filed 11-17-80; 8:45 am]
BILLING CODE 6450-85-M

[Docket No. EL81-1-000]

Boston Edison Co., et al.; Filing

November 10, 1980.

In the matter of Boston Edison Company, The United Illuminating Company, Public Service Company of New Hampshire, Cambridge Electric Light Company, and Central Vermont Public Service Company.

The filing companies submit the following:

Take notice that on October 31, 1980, Boston Edison Company, United Illumination Company, Public Service Company of New Hampshire, Cambridge Electric Light Company, and Central Vermont Public Service Company, (Petitioners) submitted for filing a petition for waiver of certain requirements in an application for the acquisition of securities of a public utility.

Petitioners submit that they are among eleven electric utility companies (sponsors) which own all of the stock of Connecticut Yankee Atomic Power Company (CYAP). In order to provide CYAP with necessary financing, CYAP wishes to issue an aggregate amount of up to $40,000,000 of certain subordinated notes. Petitioners wish to acquire a portion of these notes. Petitioners further contend that the acquisition of the notes will not affect the existing relationship between CYAP and its sponsors. Further, petitioners submit that they will agree to acquire the notes, pursuant to a five year capital contribution agreement, in proportion to the respective percentages of the sponsor's ownership of CYAP.

Specifically, petitioners request that the Commission waive section 33.2 (e), (i), (k), (l), & (Q), and section 33.3, Exhibits A, B, D, F, H, and M of the Commission's regulations. Petitioners claim that compliance with these sections would unduly delay the filing of their application, which has yet to be filed, and would further, not aid the Commission in its determination of the public interest.

Petitioners state that, pursuant to federal and appropriate state law, they will also file their application with the Securities and Exchange Commission, Connecticut Department of Public Utility Control, and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with §§ 1.8 or 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All such petitions or protests should be filed on or before December 9, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-35953 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3312]

City of Laconia, New Hampshire; Application for Preliminary Permit

November 12, 1980.

Take notice that the City of Laconia, New Hampshire (Applicant) filed on August 12, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3312 to be known as the Lakeport Dam Project located on the Winnipesaukee River in Belknap County, New Hampshire. Correspondence with the Applicant should be directed to: Honorable Roger B. McGrath, Mayor, City Hall, Beacon Street East, Laconia, New Hampshire 02346.

Project Description—The proposed project would consist of: (1) an existing stone masonry and concrete dam approximately 230 feet long and 12 feet high; (2) a proposed powerhouse with an installed generating capacity of 320 kW; and (3) appurtenant facilities. The Lakeport Dam partially controls the level of Lake Winnipesaukee located immediately upstream. Applicant estimates that the average annual net generation of the project would be 1,900,000 kWh.

Purpose of Project—Project energy would be sold to the local public.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time Applicant would investigate the structural, environmental, economic, and legal aspects of the project. Depending upon the outcome of the studies, the Applicant would prepare an application for FERC license. Applicant estimates the cost of studies under the permit would be $34,900.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before December 26, 1980, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than February 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980.

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before December 26, 1980.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3312. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35975 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3256]

City of McFarland and Western Renewable Resources, Inc.; Application for Preliminary Permit

November 12, 1980.

Take notice that the City of McFarland and Western Renewable Resources, Inc. (Applicants) filed on July 17, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3256 to be known as the North Fork Dam-American River Project located on North Fork of the American River in Placer County, California. The proposed project would occupy and use lands and waters of the U.S. Army Corps of Engineers North Fork Dam. Correspondence with the Applicant should be directed to: Mr. Myles A. Duffy, Western Renewable Resources, Inc., P.O. Box 765, Alamo, California 94507.

Project Description—The proposed project would consist of: 1) a new tunnel and 6-foot diameter penstock through

the existing Corps of Engineers' 155-foot high North Fork concrete arch dam; 2) a powerhouse containing a generating unit rated at 11 MW; 3) a 1.75-mile long transmission line; and 4) appurtenant facilities. The proposed project would be operated on a run-of-the-river basis and would utilize water that is normally spilled over the North Fork Dam. The average annual energy production is estimated to be 60 GWh.

Purpose of Project—The power output of the project would be sold to the Pacific Gas and Electric Company.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months during which time it would conduct geotechnical and engineering studies, perform preliminary designs and surveys, study alternate schemes, assess the environmental and social impacts of the project, do a feasibility analysis, and prepare an FERC license application. No new roads would be required for conducting the studies. The estimated cost of the work to be performed under the preliminary permit is $80,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before *January 16, 1981*, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than *March 17, 1981*. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), (*as amen* 44 FR 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (*as amended*, 44 *FR* 61328, October 25, 1979.)

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petition to intervene must be filed on or before *January 16, 1981*. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS, "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. *3256*. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33974 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-100-000]

The Cleveland Electric Illuminating Co.; Filing

November 12, 1980.

The filing company submits the following:

Take notice that on November 6, 1980, The Cleveland Electric Illuminating Company (CEI) tendered for filing an executed Service Agreement and Exhibits A and B thereto, providing for transmission by CEI of approximately 20 MW of power from the 345 Kv interconnection point on CEI's Juniper-Canton Line with the Ohio Power Company to the City of Cleveland, Ohio (City) in accordance with the terms and conditions of CEI's FERC Transmission Service Tariff.

CEI has requested waiver of the FERC's 60-day notice requirement in order to permit commencement of transmission service on November 1, 1980.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 2, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33967 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-78-000]

Connecticut Light and Power Co.; Filing

November 7, 1980.

The filing Company submits the following:

Take notice that on October 31, 1980, The Connecticut Light and Power Company ("CL&P") filed a Transmission

Service Agreement dated as of September 25, 1980, between The Connecticut Light and Power Company, The Hartford Electric Light Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and The Holyoke Power and Electric Company (collectively referred to as the "Northeast Utilities companies") and the Connecticut Municipal Electric Energy Cooperative ("CMEEC"), a public corporation organized under the laws of the State of Connecticut, which presently provides electric service to the municipal electric systems of the City of Groton, City of Norwich, and Borough of Jewett City. Certificates of concurrence were filed by The Hartford Electric Light Company, Western Massachusetts Electric Company, Holyoke Water Power Company, and the Holyoke Power and Electric Company.

The Transmission Service Agreement is an initial service arrangement between the Northeast Utilities companies and CMEEC and provides CMEEC with broad rights to use the Transmission system of the Northeast Utilities companies.

The parties to the Transmission Service Agreement have requested that the Commission waive its notice requirements and permit the Transmission Service Agreement to become effective as of October 1, 1980.

Any person desiring to be heard to make any protest with reference to the Transmission Service Agreement should on or before November 28, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). Persons wishing to become parties to a proceeding or to participate as a party in any hearing related thereto must file petitions to intervene in accordance with the Commission's Rules. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35983 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-93-000]

Duke Power Co.; Filing

November 12, 1980.

The filing company submits the following:

Take notice that on November 6, 1980, Duke Power Company (Duke) filed with the Commission pursuant to Section 35.12 of the Commission's Regulations Interconnection Agreements with North Carolina Electric Membership Corporation ("NCEMC") and Saluda River Electric Cooperative, Inc. ("Saluda River"). Under the terms of the Agreement, Duke will interconnect its generation and transmission system with the Catawba Nuclear Station, presently being constructed, and wheel electric power and energy to the members of NCEMC and Saluda River. The Interconnection Agreements are on file with the Commission and are available for public inspection.

Duke states that the Interconnection Agreement is one of three agreements between it and NCEMC and between it and Saluda River which are concerned with the sale to NCEMC of a 56.25 percent undivided interest in Unit No. 1 of the Catawba Nuclear Station and 28.125 percent of the support facilities at the plant, and the sale to Saluda River of 18.75 percent undivided interest in Catawba Unit No. 1 and 9.375 percent of the support facilities. The other two agreements between Duke and NCEMC and Duke and Saluda River are a Purchase, Construction and Ownership Agreement and an Operating and Fuel Agreement.

In addition to the interconnection of facilities and the wheeling by Duke of electric power and energy to the members of NCEMC and Saluda River, the Interconnection Agreements provide for the following:

(1) Determination of amount of power and energy to be supplied from Catawba to members of NCEMC and Saluda River.

(2) Determination of amount of power and energy sold from Catawba to Duke.

(3) A reliability exchange between the Catawba Units, and between the Catawba Units and the McGuire Nuclear Station owned by Duke.

(4) Determination of amount of supplemental capacity and energy to be supplied by Duke to fulfill electric requirements of members of NCEMC and Saluda River.

(5) Determination of reserves required by NCEMC and Saluda River, deficiency energy and unused supplemental energy when needed by NCEMC and Saluda River to supply their electric needs when Catawba Unit No. 2 is not running.

(6) Sales by NCEMC and Saluda River of surplus energy.

(7) Transmission services and deliveries.

(8) Metering.

(9) Billing and payments.

(10) Default and resolution of disputes.

(11) Formulas to compute rates and charges of Duke, NCEMC and Saluda River for all services.

Duke further states that it expects to initiate service to NCEMC and Saluda River under the Interconnection Agreements on or after March 1984, with the commencement of the commercial operation of either Units No. 1 or No. 2 of the Catawba Nuclear Station. Duke requests that the Interconnection Agreement be accepted for filing as soon as possible to become effective on the date of initiation of service.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 12, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35969 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. TC81-17-000]

Florida Gas Transmission Co.; Tariff Sheet Filings

November 10, 1980.

Take notice that on November 5, 1980, Florida Gas Transmission Company (FGT), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. TC81-17-000 tariff sheets pursuant to Part 281 of the Commission's Regulations under the Natural Gas Policy Act of 1978 to become effective December 1, 1980, consisting of Fourth Revised Sheet No. 20-D, First Revised Sheet Nos. 20-E and F, and Second Revised Sheet Nos. 20-G through 20-O to its FERC Gas Tariff, Original Volume No. 1.

FGT states that the purpose of this filing is to update its Index of End-Use Volumes to reflect changes in its customers' essential agricultural uses.

Any person desiring to be heard or to make any protest with reference to said

tariff sheet filings should on or before November 24, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-35968 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-32-000]

Florida Gas Transmission Co.; Application

November 12, 1980.

Take notice that on October 24, 1980, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP81-32-000 an application pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and for permission and approval to abandon certain facilities, all as more fully set forth in the the application which is on file with the Commission and open to public inspection.

Applicant proposes to recondition one 18-inch pipeline crossing the Mobile River, in Mobile County, Alabama, abandon a matching adjacent pipeline, and construct and operate approximately 2,000 feet of 30-inch pipeline. It is stated that due to erosion of the west bank of the Mobile River the crossing of both existing 18-inch pipelines are exposed and in need of immediate repair. Applicant states that the physical proximity of the two pipelines prevents rehabilitation of both existing lines. Applicant proposes to install 2,000 feet of 30-inch pipeline pursuant to either conventional dredging methods or boring under the river bed whichever proves to be a more efficient method. Furthermore, it is stated that the 30-inch line would allow Applicant to conduct pigging operations through that section of pipeline. Applicant states that after the 30-inch pipeline is completed Applicant would recondition one 18-inch pipeline and the adjacent bank and abandon the other existing pipeline. Applicant states that this proposal is necessary to eliminate the erosion problem as much as possible and to increase the reliability of its pipeline for deliveries.

Applicant states that the estimated total cost of the proposed project would be $1,684,000 which would be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35964 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-69-000]

Georgia Power Co.; Proposed Change in Rate Schedule

November 12, 1980.

Take notice that on October 31, 1980, Georgia Power Company (Georgia) tendered for filing a proposed change in the charges for Emergency Assistance (Schedule A) and Short-Term Capacity (Schedule B) under its Interchange Contract with Savannah Electric and Power Company (Savannah), Georgia Rate Schedule FERC No. 798. Georgia states that the proposed change in rate schedule continues the interconnected operation of the parties' systems and provides for emergency assistance and short-term capacity transactions, if any, during 1981.

Georgia states that the 1980 charges under the Interchange Contract would be inappropriate during 1981 because of changes in loads, costs and installed generating capacity. Accordingly, Georgia requests an effective date of January 1, 1981.

Georgia states that copies of the proposed modification have been mailed to Savannah and the Presiding Administrative Law Judge and Staff Counsel in Docket No. ER80-222.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 2, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35970 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket NO. QF80-25]

Granite City Steel; Application for Commission Certification of Qualifying Status of a Cogeneration or Small Power Production Facility

November 10, 1980.

On September 16, 1980, Granite City Steel, a division of the National Steel Corporation, filed with the Federal Energy Regulatory Commission

(Commission) an application for certification of a facility as a qualifying cogeneration facility or small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be located in the blast furnace department of the Granite City Steel Division, Granite City, Illinois. The facility is owned entirely by the applicant.

The applicant has described the facility as follows:

The cycle [* * *] starts with coal (metallurgical coal) as an input at the coke ovens. The ovens are a somewhat fuel-wise, self-sustaining facility, giving off more than the unit itself needs. The coke itself then goes into the blast furnaces, along with ore, limestone, scrap, and miscellaneous additives as the burden. The coke oven gas goes as "*waste*" to the boilers as a secondary fuel, and to other plant users. The coke in the furnaces' burden is the fuel, fired by Hot blast (heated wind). In the ironmaking process, blast furnace gas is generated as a "*waste.*" The "residual heat" or "waste" referred to in the above-mentioned definitions describes both of these by-product gases. The latent heat [1] content of which is used as fuel to make steam in the (12) twelve blast furnace area boilers. The boilers use blast furnace gas (BFG) as the prime fuel, coke oven gas (COG) as the secondary fuel, and natural gas as the tertiary fuel. The blast furnace use BFG to fire the hot blast stoves which heat the air from the blowers up to 1,800 degrees F for ignition with the coke in the blast furnace. But, the majority of the "waste" BFG goes to the boilers as its prime fuel. [* * *] The steam from the boilers is distributed for three major types of users: (1) generating electric power; (2) generating mechanical power on the large turbo-blowers (steam turbine-driven air compressors) and other turbine-driven devices in the complex; and (3) for many miscellaneous noncondensate returning users. The second use, mechanical power, is a substitute for electric motors.

The facility has a power production capacity of less than 80 megawatts.

Any person desiring to be heard or objecting to the granting or qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-35955 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[1] By "latent heat" the applicant appears to mean the chemical energy released when by-product gases are combined and combusted with air.

[Docket No. SA81-4-000]

Humble Exploration Company, Inc.; Application for Adjustment

November 10, 1980.

Take notice that on October 14, 1980, Humble Exploration Company, Inc. (Applicant), 4950 Westgrove Drive, Dallas, Texas 75248, filed with the Federal Energy Regulatory Commission (Commission) pursuant to section 502(c) of the Natural Gas Policy Act (NGPA) and section 1.41 of the Commission's Rules of Practice and Procedure an application for adjustment. Applicant seeks relief from § 273.204 of the Commission's regulations issued under the NGPA.

Specifically, Applicant states that it is the operator of 16 (sixteen) wells located in Fayette, Washington, and Lee Counties, Texas and initial deliveries from each of the subject wells began on or after February 1, 1980. Applicant states that due to its involvement in complex bankruptcy proceedings, and adjustment is neccessary because initial deliveries of gas from the 16 wells occurred prior to the filing of determination requests with the Texas Railroad Commission.

The procedures applicable to the conduct of this adjustment proceeding are found in section 1.41 of the Commission's Rules of Practice and Procedure. Order No. 24, issued March 24, 1979. (44 FR 19861, March 30, 1979).

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of section 1.41(e). All petitions to intervene must be filed on or before fifteen days after publication of this notice in the Federal Register.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-35976 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3465]

James M. Knott; Application for Preliminary Permit

November 12, 1980.

Take notice that James M. Knott (Applicant) filed on September 12, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3465 to be known as the Needham Project located on the Charles River in Needham, Norfolk County, Massachusetts. Correspondence with the Applicant should be directed to: Mr. James M. Knott, 130 Riverdale Street, Northbridge, Massachusetts 01534.

Project Description—The proposed project would consist of: (1) an existing 9-foot high, 125-foot long concrete dam; (2) an existing reservoir with negligible storage capacity; (3) an existing sluiceway and trash rack structure; (4) an existing concrete pressure chamber; (5) a new powerhouse located over the pressure chamber containing two turbine-generators to be reconditioned or replaced with a total rated capacity of 165 KW; (6) a 300-foot long buried transmission line; and (7) appurtenant facilities. Total estimated annual energy production of the project would be approximately 595,570 KWH saving the equivalent of 980 barrels of oil or 275 tons of coal.

Purpose of Project—Applicant proposes to sell energy generated at the project to Boston Edison Company for distribution to its customers.

Proposed Scope and Cost of Studies under Permit—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $18,000.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and

consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 20, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 23, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR § 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before January 20, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent to File Competing Application", "Competing Application", "Protest", or "Petition to Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3465. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 N. Capitol St., N.E., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc 80-35977 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3114]

Merced Irrigation District; Approval by Operation of Law

November 10, 1980.

Take notice that the Commission agreed at its meeting of October 29, 1980, to take no action on the application for an exemption from licensing for the Canal Creek Project No. 3114, filed on July 7, 1980, by the Merced Irrigation District.

Accordingly, the exemption is deemed granted by operation of law on October 30, 1980, under Section 4.93(d) of the Commission's regulations [18 CFR 4.93(d)], subject to the standard terms and conditions set forth in Section 4.94 of the Commission's regulations [18 CFR 4.94].

Kenneth F. Plumb,

Secretary.

[FR Doc 80-35964 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3115]

Merced Irrigation District; Approval by Operation of Law

November 10, 1980.

Take notice that the Commission agreed at its meeting of October 29, 1980, to take no action on the application for an exemption from licensing for the Escaladiam Project No. 3115, filed on July 7, 1980, by the Merced Irrigation District.

Accordingly, the exemption is deemed granted by operation of law on October 30, 1980, under Section 4.93(d) of the Commission's regulations [18 CFR 4.93(d)], subject to the standard terms and conditions set forth in Section 4.94 of the Commission's regulations [18 CFR 4.94], Article 2 of which requires compliance with the following conditions imposed by the U.S. Department of the Interior:

1. The project shall not cause greater quantities of water to be diverted than that which would be required for irrigation demands alone;

2. The project shall not result in operation changes (rate of diversion) which would adversely impact the Merced River fishery by reason of increased fluctuations or reductions in flow (instantaneous measurement);

3. The project shall not be used by the licensee as a basis for refusing to provide sufficient instream flow (Merced River) as may be determined necessary during future hearings or other project licensing procedures.

Kenneth F. Plumb,

Secretary.

[FR Doc 80-35965 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3116]

Merced Irrigation District; Approval by Operation of Law

November 10, 1980.

Take notice that the Commission agreed at its meeting of October 29, 1980, to take no action on the application for an exemption from licensing for the Fairfield Project No. 3116, filed on July 7, 1980, by the Merced Irrigation District.

Accordingly, the exemption is deemed granted by operation of law on October 30, 1980, under Section 4.93(d) of the Commission's regulations [18 CFR 4.93 (d)], subject to the standard terms and conditions set forth in Section 4.94 of the Commission's regulations [18 CFR 4.94], Article 2 of which requires compliance with the following conditions imposed by the U.S. Department of the Interior:

1. The project shall not cause greater quantities of water to be diverted than that which would be required for irrigation demands alone;

2. The project shall not result in operation changes (rate of diversion) which would adversely impact the Merced River fishery by reason of increased fluctuations or reductions in flow (instantaneous measurement);

3. The project shall not be used by the licensee as a basis for refusing to provide sufficient instream flow (Merced River) as may be determined necessary during future hearings or other project licensing procedures.

Kenneth F. Plumb,

Secretary.

[FR Doc 80-35966 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-38-000]

Michigan Wisconsin Pipe Line Co.; Application

November 12, 1980.

Take notice that on October 29, 1980, Michigan Wisconsin Pipe Line Company (Applicant), One Woodward Avenue,

Detroit, Michigan 48226, filed in Docket No. CP81-38-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of gas with Midwestern Gas Transmission Company (Midwestern) and Northern Natural Gas Company, a Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to exchange natural gas with Midwestern and Northern pursuant to a gas exchange agreement dated August 15, 1980. It is stated that Northern would deliver on a best-efforts basis up to 50,000 Mcf of gas per day to Applicant at the interconnection of their respective systems at Janesville, Wisconsin. On such days of delivery, it is stated, Midwestern would deliver equal volumes to Northern at an interconnection of their systems at North Branch, Minnesota, and would reduce its deliveries to Applicant at the interconnection of their facilities at Marshfield, Wisconsin. Applicant states that the deliveries by Midwestern to Northern would be deemed deliveries for Applicant's account, pursuant to a contract between Applicant and Midwestern dated July 17, 1967. Applicant asserts that such an arrangement is necessary in order to meet winter time market requirements on the northern end of its system and to backstop Canadian import volumes.

It is stated that the gas exchange agreement would be in effect from the date of execution until May 1, 1982, with anticipated delivery requirements from October 1, 1980, through April 30, 1981, absent extension by the parties. Applicant states that it would retain 2 percent of total delivered volumes from Northern as compensation for unaccounted for gas and compressor fuel and in addition Northern would pay Applicant 1.0 cent per Mcf of gas delivered by Northern to Applicant at the Janesville, Wisconsin, interconnection as an administrative fee.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35956 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-108]

Missouri Public Service Co.; Filing

November 10, 1980.

The filing company submits the following:

Take notice that on October 15, 1980, Missouri Public Service Commission submitted for filing a refund report pursuant to the Commission's order, issued August 22, 1980, in the above-referenced proceeding.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before December 1, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-35978 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP75-141-002]

Natural Gas Pipeline Company of America; Petition To Amend

November 12, 1980.

Take notice that on October 27, 1980, Natural Gas Pipeline Company of America (Petitioner), 122 South Michigan Avenue, Chicago, Illinois 60603, filed in Docket No. CP75-141-002 a petition to amend the order issued February 12, 1975,[1] as amended, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the exchange of natural gas with Arkansas Louisiana Gas Company (Arkla) from certain wells located in the Carthage Field, Panola County, Texas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that on February 12, 1975, it was authorized to exchange up to 10,000 Mcf of natural gas per day with Arkla pursuant to an exchange agreement dated July 5, 1974, as amended, and to construct and operate certain facilities to implement such exchange located in Washita and Grady Counties, Oklahoma. Petitioner further states that such order was amended on May 22, 1978, so as to authorize additional points of exchange of gas from the Hickey Well in Roger Mills County, Oklahoma, and the Rogers Well in Wheeler County, Texas. The order was further amended on February 9, 1979, so as to authorize additional points of exchange of gas from the Selby Hooper No. 1-5 and No. 2-4 Wells in Roger Mills County, Oklahoma, and successively amended once more on January 21, 1980, so as to authorize three additional delivery points in Roger Mills County, Oklahoma, balancing points for deliveries in Wheeler County, Texas, and Beckham County, Oklahoma, and future exchange and balancing points in a specified area of interest, it is said.

Petitioner asserts that Lone Star Gas Company a Division of Enserch Corporation (Lone Star) has acquired by assignment from Arkla on August 18, 1978, 20 percent of a certain gas purchase contract between Arkla and

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

R. Lacy, Inc. and others dated March 29, 1977, as amended, covering rights to buy gas from interests in certain properties in Panola County, Texas. Lone Star, it is stated, pursuant to a precedent agreement dated May 6, 1971, with Petitioner, has tendered for sale to Petitioner 100 percent of its interest in the acquisition from Arkla up to a limit of 6,000,000 Mcf of gas after which all remaining gas would revert to Lone Star in accordance to the terms of an assignment of gas purchase contract between the parties dated May 23, 1980. Petitioner further asserts that Arkla also retains an interest in and is connected to the 21 presently completed wells in the Carthage Field to effectuate its purchase of gas therefrom and has agreed to accept gas for Petitioner's account as part of the exchange arrangement. It is submitted that this source of gas lies outside of the area of interest from which Petitioner was authorized to exchange gas.

Accordingly, Petitioner hereby proposes to add the Carthage Field delivery point encompassing the inlet to the measurement and gathering facilities of Arkla as an exchange point with Arkla. Petitioner asserts that its deliveries at this point would be limited to 6,000,000 Mcf of gas or total production from the wells if less than 6,000,000 Mcf and that the Carthage Field delivery point would be utilized only until such gas has been received by Arkla and delivered to Petitioner at existing exchange points.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35857 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP79-327-002]

Natural Gas Pipeline Co. of America, et al.; Petition To Amend

November 12, 1980

In the matter of Natural Gas Pipeline Company of America, United Gas Pipe Line Company, Michigan Wisconsin Pipe Line Company, and Transcontinental Gas Pipe Line Corporation.

Take notice that on October 22, 1980, Natural Gas Pipeline Company of America (Natural), 122 South Michigan Avenue, Chicago, Illinois 60603, United Gas Pipe Line Company (United), 700 Milam, Houston, Texas 77002, Michigan Wisconsin Pipe Line Company (Mich Wisc), One Woodward Avenue, Detroit, Michigan 48226, and Transcontinental Gas Pipe Line Corporation (Transco), 2700 South Post Oak Road, Houston, Texas 77056, filed in Docket No. CP79-327-002 a petition to amend the order issued on November 13, 1979, in the instant docket pursuant to section 7(c) of the Natural Gas Act so as to authorize a change in the ownership percentages and capacity entitlements in the joint offshore Texas gas gathering facilities, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioners state that United has acquired gas purchase rights to Shell Oil Company's natural gas production from High Island Block A-490, offshore Texas, and desires to have its gas delivered through the facilities authorized in Docket No. CP79-327. It is stated that due to the additional volume of gas, United would not have available capacity in the A-747 pipeline segment downstream of the sub-sea valve on the A-474/A-489 gathering pipeline which would connect United's proposed gathering pipeline in Block A-490.

Therefore, Petitioners state that they have agreed to amend the construction and ownership agreement dated February 6, 1979, to reflect revised ownership percentages and capacity entitlements in the A-474/A-489 gathering pipeline. It is stated that Segment A is approximately 3.5 miles of 20-inch pipeline, 0.4 mile of 16-inch pipeline and other appurtenant facilities from the High Island Area Block A-474 production platform and the Block A-489 production platform to a sub-sea valve on the A-474/A-489 pipeline at the interconnection with United's proposed pipeline in Block A-490. Also, it is stated that Segment B is approximately 4.3 miles of 20-inch pipeline and other appurtenant facilities from the above sub-sea valve to a sub-sea tie-in to the High Island Offshore System in Block A-498. Petitioners propose the following amendments:

Ownership percentages	Total (percent)
Natural	22.82
United	48.12
Mich Wisc	15.21
Transco	13.85
Total	100.00

Capacity entitlements (percent)	Segment A (percent)	Segment B (percent)
Natural	30.00	16.41
United	31.80	62.69
Mich Wisc	20.00	10.94
Transco	18.20	9.96
Total	100.00	100.00

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35858 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-18-000]

Northern Natural Gas Company, Division of InterNorth, Inc., Application

November 12, 1980.

Take notice that on October 16, 1980, Northern Natural Gas Company, Division of InterNorth, Inc., 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP81-18-000 an applicant pursuant to Section 7(c) of the Natural Gas Act authorizing the construction and operation of certain pipeline loops in Minnesota and the transportation of natural gas for the account of Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the

Commission and open to public inspection.

Applicant proposes to construct and operate 26.3 miles of 30-inch pipeline loop which would complete the looping of Applicant's "D" line between the Ventura, Iowa, compressor station and the Owatonna, Minnesota, compressor station and extend 9.3 miles beyond the Owatonna station.

Applicant states that it is authorized to import up to 200,000 Mcf of Canadian natural gas per day at a point on the international boundary between the United States and Canada near Emerson, Manitoba. Applicant further states that 100,000 Mcf of the imported gas is proposed to be transported through Northern Border Pipeline Company (Northern Border) facilities to Ventura, Iowa, instead of further north in the Minnesota market area. It is stated that the installation of the proposed facilities would enable Applicant to transport approximately 100,000 Mcf of natural gas per day north of Farmington, Minnestoa, thereby meeting its northern customers' requirements.

Applicant estimates the cost of the proposed facilities to be $16,963,560 which would be financed from cash on hand. It is stated that the project would not resut in any increased cost to Applicant's customers for the transportation of Canadian gas.

Applicant also proposes pursuant to an October 10, 1980, gas transportation agreement to transport up to 75,000 Mcf of gas per day for the account of Natural. It is stated that Natural would purchase Canadian gas from ProGas, Limited, and that Northen Border would transport these volumes to Applicant at the Ventura Delivery point. Applicant states it would then transport by displacement up to 75,000 Mcf per day of thermally equivalent volumes at an existing point of interconnection between Applicant's and Natural facilities near Glenwood, Iowa.

It is stated that Natural would pay Applicant a monthly demand charge of $48,293 for the transportation service.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35971 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-29-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application

November 12, 1980.

Take notice that on October 22, 1980, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP81-29-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of facilities in order to transport natural gas in interstate commerce, all as more fully set forth in application which is on file with the Commission and open to public inspection.

Applicant proposes to transport natural gas from a supply area in Routt County, Colorado, by means of the proposed facilities. It is stated that Applicant has contracted with Mobil Oil Corporation, Mountain Petroleum Ltd., and Union Oil of California for purchase of gas from dedicated acreage with total proven reserves of approximately 10,200,000 Mcf. Applicant states that future reserves from the dedicated acreage and other acreage are anticipated. Applicant states that the proposed construction is necessary to receive and transport these gas supplies.

Applicant proposes to construct and operate approximately 26.7 miles of 6-inch pipeline and one 80 horsepower compressor station (Routt County No. 1) to transport and deliver the above gas to a proposed interconnection on Mountain Fuel Supply Company's (Mountain Fuel) existing pipeline system in Moffat County, Colorado. It is stated that Mountain Fuel would deliver the gas to Colorado Interstate Gas Company (CIG) at Kanda, an existing interconnection located in Sweetwater County, Wyoming. CIG would deliver said gas for Applicant's account to Applicant's system at existing points of interconnection in Moore County, Texas, or Kearny County, Kansas. It is stated that Applicant has entered into agreements with both companies, which agreements would be in effect commencing with the date of the initial gas flow and terminating at the end of a two-year period.

Applicant states that the proposed 6-inch pipeline would originate at the discharge of the Routt County No. 1 Station, parallel the Williams Fork River in a northwesterly direction into Moffat County, Colorado, then turn north/northwesterly eventually interconnecting with the existing Mountain Fuel Pipeline in Moffat County, Colorado.

Applicant proposes that the Routt County No. 1 Station would be located north of Pagoda, Routt County, Colorado, and that the station would consist initially of an 80 horsepower rental unit capable of accommodating transportation of the minimum contract volumes for the first two operation years. Applicant states that rental horsepower would be used while determining actual flow characteristics. In the third year, it is stated, area deliverability would increase to approximately 10,600 Mcf of gas per day. Applicant states that then the rental unit would be removed and replaced with the appropriate horsepower capacity facility. Authorization for increased horsepower would be sought later.

The estimated total cost of the proposed facilities would be $5,297,610, which cost would be financed from funds generated through operations or if necessary short-term borrowings.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance

with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35959 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3466]

Pacific Northwest Generating Company and Tumalo Irrigation District; Application for Preliminary Permit

November 10, 1980.

Take notice that Pacific Northwest Generating Company and Tumalo Irrigation District (Applicant) filed on September 15, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for proposed Project No. 3466 to be known as Columbia Southern Canal Hydroelectric Project located on the Tumalo Creek in Deschutes County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. David E. Pipe, Pacific Northwest Generating Company, 8383 N.E. Sandy Blvd., Suite 330, Portland, Oregon 97220.

Project Description—The proposed project would consist of: (a) an existing 20-foot long, 6-foot high wooden diversion structure across the Tumalo Creek; (b) approximately 6 miles of unlined canal; (c) three penstocks-4,000, 5,200, and 2,400 feet long-originating at points on the canal 2, 3 and 5 miles downstream of the diversion structure, carrying water to three powerhouses on the canal; (d) three single-generating unit powerhouses with rated capacities of 3.2, 3.2 and 2.4 MW, respectively (total rated capacity of the project 8.8 MW); and (e) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 37.9 million kWh.

Purpose of Project—Project energy would be utilized to serve the Pacific Northwest Generating Company's customers/members.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 36-month preliminary permit to prepare a project report, including preliminary designs, and results of hydrological, environmental and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Federal, State and local agencies, preparing a license application, conducting final field surveys and preparing designs is estimated by the Applicant to be $69,500.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before January 21, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 23, 1981. A notice of intent must conform with the requirements of 18 CFR § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 and § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determing the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 21, 1981.

Filing and Service of Responsive Documents—Any comments, notice of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3466. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each

representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-35979 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3470]

Pacific Northwest Generating Company and Tumalo Irrigation District; Application for Preliminary Permit

November 10, 1980.

Take notice that on September 15, 1980, Pacific Northwest Generating Company and Tumalo Irrigation District (Applicant) filed an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3470 to be known as Bend Canal Hydroelectric Project, located on the Deschutes River in Deschutes County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas R. Howard, Pacific Northwest Generating Company, 8383 N. E. Sandy Boulevard, Suite 330, Portland, Oregon 97220.

Project Description—The proposed project would consist of: (a) the existing 500-foot concrete gravity Tumalo Diversion Dam across the Deschutes River; (b) a 3-mile long unlined irrigation canal; (c) a 400-foot long penstock; (d) a powerhouse containing a single generating unit with a rated capacity of 2.2 MW; and appurtenant facilities.

The Applicant estimates that the average annual energy output would be 8 million kWh.

Purpose of Project—Project energy would be utilized to serve the needs of the Pacific Northwest Generating Company's members/customers.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 36-month permit to prepare a definitive project report including preliminary designs, results of environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $40,500.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agenices that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before March 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than January 21, 1981. A notice of intent must conform with the requirements of 18 C.F.R. § 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 C.F.R. § 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely filed a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene, in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before January 21, 1981.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3470. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-35890 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3113]

South San Joaquin Irrigation District; Approval by Operation of Law

November 10, 1980.

Take notice that the Commission agreed at its meeting of October 29, 1980, to take no action on the application for an exemption from licensing for the Frankenheimer Project No. 3113, filed on July 7, 1980, by the South San Joaquin Irrigation District.

Accordingly, the exemption is deemed granted by operation of law on October 30, 1980, under Section 4.93(d) of the Commission's regulations [18 CFR 4.93(d)], subject to the standard terms and conditions set forth in Section 4.94 of the Commission's regulations [18 CFR 4.94], Article 2 of which requires compliance with the following conditions imposed by the U.S. Department of the Interior:

1. The project shall not cause greater quantities of water to be diverted than that which would be required for irrigation demands alone;

2. The project shall not result in operation changes (rate of diversion) which would adversely impact the Stanislaus River fishery by reason of increased fluctuations or reductions in flow (instantaneous measurement);

3. The project shall not be used by the licensee as a basis for refusing to

provide sufficient instream flow (Stanislaus River) as may be determined necessary during future hearings or other project licensing procedures.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35987 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-63-000]

Southern Company Service, Inc.; Proposed Tariff Change

November 12, 1980.

The filing company submits the following:

Take notice that Southern Company Services, Inc., on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company on October 30, 1980 tendered for filing Amendment No. 1 Manual under the Southern Company System Intercompany Interchange Contract (the Manual). The filing also includes informational schedules which detail the charges and derivation of components of the rates to be used during the calendar year 1981. The filing of the informational schedules was made in accordance with a settlement agreement in Docket No. ER80-65 which was approved by Order of this Commission dated October 1, 1980.

Amendment No. 1 to the Manual provides for a change in the pricing of interchange energy between the operating companies of the Southern Company system. The change provides that such energy will be priced at the incremental cost of the generating unit providing the energy instead of the average cost of such generating unit.

Copies of the filing were served upon the parties of record in *Southern Company Services, Inc.*, Docket No. ER80-65.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 2, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35972 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. QF80-28]

Stieren Farms; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 12, 1980.

On September 26, 1980, Stieren Farms filed with the Federal Energy Regulatory Commission (Commission) an application for certification of qualifying status of a small power production facility pursuant to § 292.207 of the Commission's rules.

The proposed facility will be located in Northern Montgomery County, Illinois. The facility is owned entirely by the applicant, which is a family partnership. The applicant states that the primary energy source will be waste methane gas from an abandoned coal mine. The installed capacity of the facility is 500 kilowatts.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35974 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP80-388-002]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Amendment to Application

November 12, 1980.

Take notice that on October 31, 1980, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP80-388-002 an amendment to its application filed June 2, 1980, in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to reflect an extension until May 31, 1981, of the transportation of natural gas for Orange and Rockland Utilities, Inc. (Orange and Rockland), all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Applicant states that under its pending application it sought authorization to transport up to 50,000 Mcf of natural gas per day for Orange and Rockland. It is stated that Orange and Rockland purchased said gas from East Tennessee Natural Gas Company (East Tennessee) for use in Orange and Rockland's electric generating stations to displace fuel oil. Applicant states that the transportation service, originally requested through August 31, 1980, has been rendered pursuant to temporary certificate authorizations extending storage through October 31, 1980, and the subsequent withdrawl of the stored gas until May 31, 1981.

Since the fuel shortage emergency period has been extended from August 31, 1980, to June 1, 1981, it is stated, Orange and Rockland has arranged with East Tennessee to continue the purchase of said volumes of gas until May 31, 1981. Applicant states that therefore it desires to amend its application in the instant docket to allow Applicant to transport said gas through May 31, 1981. Under the proposed authorization, Applicant projects that it would transport up to 3,000,000 Mcf of gas in the period November 1, 1980, to May 31, 1981, based on a peak day of up to 50,000 Mcf of natural gas per day.

Furthermore, Applicant states that transported gas would be surplus to its customers' market requirements during the extended period; however, if curtailment becomes necessary interruption of the transportation might become necessary.

Applicant also states that East Tennessee has asserted that if it is not permitted to sell said gas to Orange and Rockland, and if it cannot find another off-system purchaser, as it appears, East Tennessee would back off an equivalent volume of its purchases from Applicant. Should this occur, Applicant asserts, it would be without a buyer and would be required to reduce its purchases by equivalent volume from its supply sources.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before December 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to

intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35960 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3136]

Turlock Irrigation District; Approval by Operation of Law

November 10, 1980.

Take notice that the Commission agreed at its meeting of October 29, 1980, to take no action on the application for an exemption from licensing for the Upper Dawson Project No. 3136, filed on July 7, 1980, by the Turlock Irrigation District.

Accordingly, the exemption is deemed granted by operation of law on October 30, 1980, under Section 4.93(d) of the Commission's regulations [18 CFR 4.93(d)], subject to the standard terms and conditions set forth in Section 4.94 of the Commission's regulations [18 CFR 4.94].

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35988 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CP81-24-000]

United Gas Pipe Line Co.; Application

November 12, 1980.

Take notice that on October 20, 1980, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP81-24-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity auhorizing the transportation of natural gas for Tenneco Oil Company, a Division of Tenneco Inc. (Tenneco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport up to 7,000 Mcf of natural gas per day for Tenneco pursuant to a gas transportation agreement dated September 26, 1980. It is stated that Tenneco has the gas available in Lake Bistineau Field, Bienville Parish, Louisiana. Applicant states that it would receive the gas at a mutually agreeable point on Applicant's 30-inch Lake Bistineau Storage Field Main Line near the R.C. Baker No. 1 well, Bienville Parish, Louisiana. It is stated that Applicant would redeliver equivalent volumes, less 2.3 percent for fuel and unaccounted for gas, to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) for Tenneco's account at the existing interconnection points between Applicant and Tennessee at (i) Venton, Cameron Parish, Louisiana, (ii) Cocodrie, Terrebonne Parish, Louisiana, (iii) Bayou Sale, St. Mary Parish, Louisiana, and/or (iv) other mutually agreeable existing points of interconnection between Tennessee and Applicant.

Applicant states that any measuring facilities necessary to receive the gas would be constructed at Tenneco's expense and that the measuring facilities for delivery to Tennessee are in existence.

It is stated that Tenneco has agreed to pay Applicant an amount per Mcf equal to Applicant's jurisdictional transportation rate in effect from time to time in Applicant's Northern Rate Zone as such may be determined by Applicant based on rate filings made from time to time with the Commission. It is stated that the current rate is 19.32 cents per Mcf.

Applicant states that the transportation agreement would remain in force for five years beginning on the date deliveries commence and continuing from year to year thereafter.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 3, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-35961 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3453]

Western States Energy & Resources, Inc.; Application for Preliminary Permit

November 10, 1980.

Take notice that Western States Energy & Resources, Inc. (Applicant) filed on September 10, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for the proposed Tuttle Creek Dam and Lake Project, FERC No. 3452, to be located at the U.S. Army Corps of Engineers' Tuttle Creek Dam and Reservoir, a flood control project, on the Big Blue River near Manhattan, in Pottawatomie and Riley Counties, Kansas. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Jeffrey Kossak, Esq., Western State Energy & Resources, Inc., Suite 1900, 14 Wall Street N.Y., N.Y. 10005.

Project Description—The proposed project would utilize the existing U.S. Army Corps of Engineers' Tuttle Creek and Reservoir. Project No. 3453 would consist of: (1) a proposed penstock extending from the existing outlet works; (2) a proposed powerhouse located on the western bank of the river; (3) proposed transmission lines; and (4) appurtenant facilities. Applicant estimates the capacity of the proposed project to be 2 MW and the annual energy output to be 9 GWh.

Purpose of Project—Energy produced at the proposed project would probably be sold to Kansas Power and Light.

Proposed Scope and Cost of Studies under Permit—Applicant has requested a 36-month permit to prepare a definitive project report, including preliminary design and economic feasibility studies, hydrological studies, environmental and social studies, and soil and foundation data. The cost of the aforementioned activities along with obtaining agreements with other Federal, State and local agencies is estimated to be $57,500.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must submit to the Commission, on or before *January 12, 1981*, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than *March 13, 1981*. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Petitions to Intervene—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before *January 12, 1981*.

Filing and Service of Responsive Documents—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3453. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, N.W., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-35981 Filed 11-17-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. CS74-265, et al.]

Whitaker Enterprises, Inc. (Energy Enterprises, Inc.; Applications for "Small Producer" Certificates [1]

November 10, 1980.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should or before November 25, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedures, a hearing will held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No.	Date filed	Applicant
CS74-265	8/5/80	Whitaker Enterprises, Inc. (Energy Enterprises Inc.), P.O. Box 1274, Liberal, Kansas 67901
CS81-2-000	10/6/80	Petroleum Corporation of America, 3365 Anaconda Tower, 555 17th Street, Denver, Colorado 80202.
CS81-3-000	10/7/80	Cove Oil & Gas Company, P.O. Box 256, West Jefferson, N.C. 28694
CS81-4-000	10/14/80	Center Bar Gas Company, 301 Frederick Towers, 2400 Frederick Avenue, St. Joseph, Mo. 64506.
CS81-5-000	10/14/80	Epsilon 1980 S T Joint Venture, P.O. Box 5561, Westport, Connecticut 06881.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein

Docket No.	Date filed	Applicant
CS81-6-000	10/10/80	Stowers Oil & Gas Company, P.O. Box 420, Pampa, Texas 79065.
CS81-7-000	10/10/80	Cape Fear Energy Corporation, P.O. Box 2129, Fayetteville, N.C. 28302.
CS81-8-000	10/17/80	Deposit Guaranty National Bank, Trustee under will of Dr. Sam J. Hooper, One Deposit Guaranty Plaza, Jackson, Miss. 39205.
CS81-9-000	10/20/80	Eric V. Eisner and Jane M Eisner, Trustees under the will of John J. Eisner, 403 2nd Place, Abernathy, Texas 79311.
CS81-10-000	10/20/80	Fiduciary Trust Company of New York, Trustee under the will of Chester D. Tripp, Deceased, 403 2nd Place, Abernathy, Texas 79311.
CS81-11-000	10/20/80	Eric V. Eisner, 403 2nd Place, Abernathy, Texas 79311.
CS81-12-000	10/22/80	Sterling Drilling and Production Co., Inc., 622 Third Avenue, New York, NY 10017.
CS81-13-000	10/22/80	OMNI Drilling Partnership No. 1980-2, P.O. Drawer 430, Wayne, Pa. 19087.
CS81-14-000	10/27/80	Jack Worsham, P.O. Box 1157, Borger, Texas 79007.
CS81-15-000	10/29/80	Maurice E. Forney and Charles J. Worrel, 2013 Alamo National Bldg., San Antonio, Texas 78205.
CS81-16-000	10/31/80	Dr. Ray Halley, Jr., 3388 S. Oneida Way, Denver, Colorado 80224.

[1] Being noticed to reflect name change from Energy Enterprises, Inc., to Whitaker Enterprises, Inc.

[FR Doc. 80-35962 Filed 11-17-80; 8:45 am]
BILLING CODE 6450-85-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-C30192; PH-FRL 1673-1]

Abbott Laboratories; Application to Conditionally Register a Pesticide Product Containing a New Active Ingredient

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Abbott Laboratories has submitted an application to conditionally register the pesticide product *Phytophthora palmivora* which contains the active ingredient 3.2×10^8 Live Chlamydospores of *Phytophthora palmivora* MWV per pint. (This is equivalent to 6.7×10^5 live chlamydospores per milliliter) which has not been previously registered in a pesticide product.

DATE: Comments may be submitted on or before December 18, 1980.

ADDRESS: Written comments to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351, 401 M St. SW., Washington, D.C. 20460.

Written comments should bear a notation indicating the EPA Registration Number 275-GO and the document control number "[OPP-C30192]."

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort (202-755-1397).

SUPPLEMENTARY INFORMATION: Abbott Laboratories, 14th St., and Sheridan Rd., Chicago, IL 60064, has submitted an application to conditionally register the pesticide product *Phytophthora palmivora* (EPA Reg. 275-GO) which contains the active ingredient 3.2×10^8 Live Chlamydospores of *Phytophthora palmivora* MWV per pint. The application proposes that the mycoheribicide be used for control of *Morrenia odorata*, strangler or milkweed vine, in citrus groves. This fungus causes root infection in milkweed vine plants that kill the vine in 2-10 weeks following application.

Notice of approval or denial of this application will be announced in the Federal Register. Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the Federal Register if the application is approved.

(Sec. 3(c)(4), 86 Stat. 972 (7 U.S.C. 136a))

Dated: November 12, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-35872 Filed 11-17-80; 8:45 am]
BILLING CODE 6560-32-M

[PF-207; PH-FRL 1673-3]

Abbott Laboratories; Filing of Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that Abbott Laboratories has submitted a proposal that the mycoherbicide, *Phytophthora palmivora* MWV be exempted from the requirement of a tolerance on citrus fruit.

ADDRESS: Written comments to: Richard F. Mountfort, Product Manager (PM) 23, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-351 401 M St. SW., Washington, D.C. 20460.

Written comments may be submitted while a petition is pending before the agency. The comments are to be identified by the document control number "[PF-207]" and the petition number. All written comments filed pursuant to this notice will be available for public inspection in the product manager's office from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard F. Mountfort (202-755-1397).

SUPPLEMENTARY INFORMATION: EPA gives notice that Abbott Laboratories, 17th and Sheridan Rd., N. Chicago, IL 60064 has submitted pesticide petition OF2418 to the EPA, which proposes to amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for *Phytophthora palmivora* on citrus fruit. This notice is in accordance with the Federal Food, Drug, and Cosmetic Act.

(Sec. 408(d)(1), 68 Stat. 512, (7 U.S.C. 135))

Dated: November 12, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-35874 Filed 11-17-80; 8:45 am]
BILLING CODE 6560-32-M

[PP OG2227/T273; PH-FRL 1672-3]

Ciba-Geigy Corp.; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On October 7, 1980, a temporary tolerance was established for use of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-ethyl-,3-dioxolan-2-yl]methyl]-1*H*-1,2,4,-triazole and its 2,4-dichlorobenzoic acid metabolites (calculated as parent compound) in or on almonds at 0.1 part per million (ppm), almond hulls and apples at 0.5 ppm, peaches and plums (fresh prunes) at 1 ppm, and in cherries at 2 ppm.

FOR FURTHER INFORMATION CONTACT: Eugene M. Wilson, Product Manager (PM) 21, Registration Division (TS-767), Office of Pesticide Programs,

Environmental Protection Agency, Rm. E-349, 401 M St., SW., Washington, D.C. 20460, (202-755-1806).

SUPPLEMENTARY INFORMATION: Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409 requested that temporary tolerances be established for residues of the fungicide 1-[[2-(2,4-dichlorophenyl)-4-ethyl-1, 3-dioxolan-2-yl]methyl]-1*H*-1,2,4-triazole and its 2,4-dichlorobenzoic acid metabolites (calculated as the parent compound) in or on almonds at 0.1 ppm, almond hulls and apples at 0.5 ppm, peaches and plums (fresh prunes) at 1 ppm and in cherries at 2 ppm.

These temporary tolerances are to permit the marketing of the above raw agricultural commodities when treated in accordance with the experimental use permit (100-EUP-64) currently being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819, 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerances would protect the public health. The temporary tolerances have been established on the condition that the experimental use permit be used with the following provisions:

1. The total amount of the fungicide to be used will not exceed the quantity authorized in the experimental use permit.

2. Ciba-Geigy will immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm will also keep records of production, distribution, and performance, and on request, make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire December 31, 1982. Residues not in excess of these temporary tolerances remaining in or on the above raw agricultural commodities after expiration of these tolerances will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if anyscientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

(Sec. 408 (j), 68 Stat. 561, (21 U.S.C. 346a(j))

Dated: November 12, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-35867 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-32-M

[PP OG2300/T260A; PH-FRL 1672-5]

Mobay Chemical Corp.; Establishment of Temporary Tolerance; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects the signature line that appeared in a document that published in the Federal Register of August 25, 1980 (45 FR 56431) FR Doc. 80-25811.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Federal Register Staff (TS-788), Office of Pesticides and Toxic Substances, Enviromental Protection Agency, Rm. EB-42, 401 M St., SW., Washington, D.C. 20460, (202-426-2432).

SUPPLEMENTARY INFORMATION: A notice that published in the Federal Register of August 25, 1980 (45 FR 56431) appeared with the incorrect signature line. The signature reading: "Herbert Hamson" is corrected to read "Herbert Harrison."

Dated: November 12, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-35868 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-32-M

[PP 5G1626/T272; PH-FRL 1672-4]

Sodium Azide; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A temporary tolerance has been established for residues of the fungicide sodium azide (expressed as the azide ion N_3) in or on tomatoes at 0.1 part per million (ppm).

FOR FURTHER INFORMATION CONTACT: Eugene M. Wilson, Product Manager (PM) 21, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-349, 401 M St., SW., Washington, D.C. 20460, (202-755-1806).

SUPPLEMENTARY INFORMATION: EPA has established a tolerance for residues of the fungicide sodium azide (expressed as the azide ion N_3) in or on tomatoes at 0.1 ppm. This request for establishment of a tolerance was submitted by PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222.

This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the experimental use permit (748-EIP-13) which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (92 Stat. 819, 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of a temporary tolerance would protect the public health. The temporary tolerance has been established on the condition that the experimental use permit be used with the following provisions:

1. The total amount of the fungicide must not exceed the amount authorized in the experimental use permit.

2. PPG Industries will immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm will also keep records of production, distribution, and performance, and on request, make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires on January 1, 1981. Residues not in excess of this temporary tolerance remaining in or on tomatoes after expiration of this tolerance will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health.

(Sec. 408(j), 68 Stat. 561, (21 U.S.C. 346a(j))

Dated: November 12, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 80-35868 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50506; PH-FRL 1672-7]

Renewal of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has issued renewals of experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: The designated Product Manager given in each permit at the following address: Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460.

784–EUP–13. PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. This experimental use permit allows the use of 15,000 pounds of the fungicide sodium azide (expressed as the azide ion N_3) on tomatoes to evaluate control of pod and black rot. A total of 400 acres are involved. The program is authorized only in the State of Florida. The program is effective from August 26, 1980 to January 1, 1981. A temporary tolerance for residues of the fungicide in or on tomatoes has been established. (PM 21, Eugene M. Wilson, Rm. E–349, 202–755–1806).

27596–EUP–23. Intermountain Forest and Range Experiment Station, Forestry Sciencies Laboratory, 1221 S. Maine St., Moscow, ID 83843. This experimental use permit allows the use of 80 pounds of the insecticide 3-methyl-2-cyclohexen-1- one on windfelled Douglas-fir to evaluate control of Douglas-fir beetles. A total of 100 acres are involved. The program is authorized only in the States of Idaho, Montana, Oregon, and Washington. The experimental use permit is effective from August 21, 1980 to August 21, 1981. (PM 17, Franklin D.R. Gee, Rm. E–341, 202–755–1150).

42634–EUP–2. U.S. Department of Agriculture, Science and Education Administration, Washington, D.C. 20250. This experimental use permit allows the use of 49.5 pounds of the insecticide 1-(8-dimethyl-nonyl)-4-(1-methylethyl) benzene on noncrop areas to evaluate control of imported fire ants. A total of 4,110 acres are involved. The program is authorized only in the States of Georgia, Louisiana, and Texas. The experimental use permit is effective from September 30, 1980 to September 30, 1982. (PM 17, Franklin D.R. Gee, Rm. E–341, 202–755–1150).

1471–EUP–61. Elanco Products Co., A Div. of Eli Lilly & Co., PO Box 1750, Indianapolis, IN 46285. This experimental use permit allows the use of 15,000 pounds of the herbicide tebuthiuron on non-crop areas such as railroad right-of-way, utility right-of-way, industrial sites, pipelines, and along highways to evaluate control of weeds. A total of 3,000 acres are involved. The program is authorized only in the States of Alabama, Florida, Georgia, Illinois, Iowa, Minnesota, Montana, Nebraska, North Carolina, South Carolina, South Dakota, and Wisconsin. The experimental use permit is effective from September 29, 1980 to September 29, 1981. (PM 25, Robert J. Taylor, Rm. E–359, 202–755–2196).

Persons wishing to review the experimental use permits are referred to the product manager. Inquiries regarding these permits should be directed to the contact person given above. It is suggested that interested persons call before visiting the EPA Headquarters Office so that the appropriate file may be made available for inspection from 8 a.m. to 4 p.m. Monday through Friday, excluding holidays.

(Sec. 5, 92 Stat. 819, as amended; (7 U.S.C. 136))

Dated: November 12, 1980.

Douglas D. Campt,

Director, Registration Division, Office of Pesticides Programs.

[FR Doc. 80-35870 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-32-M

[PP 5G1590/T255A; PH-FRL 1673-2]

Tricyclazole; Establishment of Temporary Tolerance; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects the signature line that appeared in a document that published in the Federal Register of August 25, 1980 (45 FR 56432) FR Doc. 80–25809.

FOR FURTHER INFORMATION CONTACT: John A. Richards, Federal Register Staff (TS–788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. EB–42, 401 M St. SW., Washington, D.C. 2046, (202–426–24032).

SUPPLEMENTARY INFORMATION: A notice that published in the Federal Register of August 25, 1980 (45 FR 56432) appeared with the incorrect signature line. The signature reading: "Herbert Hamson" is corrected to read "Herbert Harrison."

Dated: November 12, 1980.

Douglas D. Campt,

Director Registration Division, Office of Pesticide Programs.

[FR Doc. 80-35873 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-32-M

[W-4-FRL 1672-8]

Water Quality Standards; Navigable Waters of the State of Florida

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of State water quality standards revision approval.

SUMMARY: The Environmental Protection Agency has approved variances from Florida's water quality standards for: (1) The Fenholloway River, adopted by the State of Florida on April 26, 1979, (2) segments of the St. John's River, adopted by the State of Florida on September 18, 1979, and (3) Myrtle Slough adopted by the State on July 10, 1980.

FOR FURTHER INFORMATION CONTACT: R.F. McGhee, Water Division, Environmental Protection Agency, Region 4, 345 Courtland Street NE., Atlanta, GA 30365, 404/881–4793.

SUPPLEMENTARY INFORMATION: EPA approved the following revisions to Florida's water quality standards (Chapter 17–2, Florida Administrative Code) in accordance with Section 303(c)(3) of the Clean Water Act.

(1) On July 25, 1980, EPA, Region 4, approved a variance from Florida's criteria for dissolved oxygen, specific conductance, phenolic compounds and oil and grease for the Fenholloway River in Perry, Florida. The variance was requested by Buckeye Cellulose Corporation since achievement of these criteria would have resulted in substantial and widespread economic and social impact.

(2) On September 27, 1979, EPA, Region 4 approved a variance from water quality criteria for cadmium, lead, and mercury and zinc at times when the natural background levels approach or exceed the water quality standards for segments of the St. John's River.

(3) On August 27, 1980, EPA, Region 4, approved a dissolved oxygen variance for the stream identified as Myrtle Slough in Punta Gorda, Florida. The variance establishes a dissolved oxygen criterion of 2.5 mg/1 during the months June through September when the Class III dissolved oxygen criterion of 5.0 mg/1 cannot be met due to natural background conditions.

These revisions are consistent with the Clean Water Act as interpreted in the Agency's water quality standards regulations at 40 CFR 35.1550.

Copies of the revisions may be obtained from the Florida Department of Environmental Regulation, 2462 Executive Center Circle East, Tallahassee, Florida 32301.

(Sec. 303(c), Clean Water Act (33 U.S.C. 1313(c)))

Dated: November 11, 1980.

Eckardt Beck,

Assistant Administrator for Water and Waste Management.

[FR Doc. 80-35871 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-38-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 80-620; BC Docket Nos. 80-661, 80-662, 80-663, and 80-664; File Nos. BPH-11005, BPH-780831AA, BPH-780831AB, and BPH-780831AR]

Christian Communications Inc., et al.; Hearing Designation Order

In the matter of applications of Christian Communications Incorporated, Mechanicsville, Virginia Req: 92.7 MHz, Channel 224; 3 KW (H&V), 300 feet (BC Docket No. 80-661, File No. BPH-11005), Raymond Bentley Sr. and Douglas L. Chapman Jr. Trading as Mechanicsville Broadcasting Co., Mechanicsville, Virginia Req: 92.7 MHz, Channel 224; 3 KW (H&V), 300 feet (BC Docket No. 80-662, File No. BPH-780831AA) Drum Communications, Inc., Mechanicsville, Virginia Req: 92.7 MHz, Channel 224; 3 KW (H&V), 300 feet (BC Docket No. 80-663, File No. BPH-780831AB) Hanover Radio, Inc., Mechanicsville, Virginia Req: 92.7 MHz, Channel 224; 3 KW (H&V), 295.5 feet (BC Docket No. 80-664, File No. BPH-780831AQ) and Ninety-Two Point Seven Broadcasting, Inc., Mechanicsville, Virginia Req: 92.7 MHz, Channel 224; 3 KW (H&V), 300 feet (BC Docket No. 80-665 File No. BPH-780831AR): for construction permit for a new FM station.

Memorandum Opinion and Order

Adopted: October 21, 1980.

Released: November 14, 1980.

By the Commission: Commissioner Quello concurring in the result.

1. The Commission has under consideration (i) the above-captioned mutually exclusive applications by Christian Communications Incorporated (CCI), Raymond Bentley, Sr. and Douglas L. Chapman, Jr. Tr. as Mechanicsville Broadcasting Co. (Bentley), Drum Communications, Inc. (Drum), Hanover Radio, Inc. (Hanover) and Ninety-Two Point Seven Broadcasting, Inc. (92.7); (ii) an application for review filed by Drum; and (iii) pleadings in opposition and reply thereto.

2. *Drum.* Analysis of the financial data submitted by Drum reveals that $83,160.90 will be required to construct and operate the proposed station for three months, itemized as follows:

Equipment down payment	$13,635 00
Equipment payments with interest	3,425 90
Building	5,000 00
Miscellaneous	20,000 00
Operating costs (3 months)	41,100 00
Total	83,160.90

Drum plans to finance construction and operation with loans of $175,000 from an investor group composed of Equico Capital Corporation, Syndicated Communications, Inc. and Alliance Enterprise Corporation. While both Equico and Syndicated have indicated their willingness to contribute up to $100,000 each, the commitments are subject to the participation of all three groups and Alliance has not committed itself to participation. Applicant has not included its own balance sheet, nor the balance sheets of the participating investment groups. Applicant has shown no funds to meet its proposed costs. Accordingly, a general financial issue will be specified.

3. Drum has failed to comply with the *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650, 21 RR 2d 1507 (1971). Applicant has incorporated by reference the community leader interviews conducted for the application of assignment of licensee of WENZ, Highland Springs, Virginia. None of the community leaders interviewed in that survey represented Mechanicsville, Virginia. Applicant has surveyed five additional community leaders in the instant application, none of which represent Mechanicsville, and only one of which lives in the county in which Mechanicsville is situated, Hanover County. Drum, in failing to consult any leaders of the city of license, has failed to comply with Question and Answer 2 of the Primer. Accordingly, a general ascertainment issue will be specified.

4. *92.7.* 92.7's application, filed August 31, 1978, described its transmitter site as "two miles north of Mechanicsville." All engineering data contained in Section V of FCC Form 301 pertained to this site. On December 1, 1978, the application was dismissed because applicant had failed to present reasons in support of a request for waiver of Section 73.207[1] of the Commission's Rules, the minimum spacing rules. Applicant petitioned for reconsideration on January 2, 1979 and amended its application proposing a new transmitter site which obviated the short-spacing problem. The petition states that:

> Because of a communication problem between the 92.7 principal in charge of locating a transmitter site and the applicant's consulting engineer, the application, as originally filed, did not describe the particular parcel of land upon which 92.7 had obtained an option. One of the 92.7 principals had acquired an option on a piece of land approximately 1 mile south of the site specified in the original application . . . The discrepancy was discovered within a few weeks after the 92.7 application was filed. Since that time, 92.7 has been in the process of locating an alternate site, and amending its application to utilize the new site. 92.7 has moved with deliberation to correct this problem since the time it was discovered.

5. Drum opposed 92.7's petition for reconsideration on the ground that 92.7's application, lacking an engineering proposal pertaining to petitioner's available site, actually had no engineering proposal. Drum asserted that it was not substantially complete when filed on the cut-off date as required by Section 1.227(b) of the Commission's Rules,[2] and was ineligible for comparative consideration. 92.7, in reply, argued that the one mile difference between the reported and actual site was topographically inconsequential and that only a slight difference in proposed contours was involved. 92.7's petition was granted and its application, as amended, was accepted *nunc pro tunc* by letter from the Chief, Broadcast Bureau on November 5, 1979.

6. Drum filed an application for Commission review of the November 5, letter accepting 92.7's application, as amended. Drum's basis for review is the same as that of its opposition to the petition for reconsideration: 92.7's application was substantially incomplete when filed in that ". . . it was as if no technical information had been filed at all . . ." Drum alleges that the Broadcast Bureau Chief's action was in error because the application as tendered violated Section 1.227(b) of the Rules should be dismissed. 92.7's opposition contends that its application had both a site and complete engineering data when filed. Moreover, 92.7 argues, had it kept that site, "it could have corrected its problem by filing a minor change amendment. . . ." 92.7 also argues that the public interest

[1] Section 73.207 states, in part that. . . . "no application for a station will be accepted for filing, unless the proposed facilities will be located at least as far from the transmitter sites of other co-channel and adjacent channel stations (both existing and proposed) as the distances specified in this paragraph." 92.7 was short-spaced with an earlier filed application which was entitled to protection by virtue of being cut-off prior to the tender of 92.7's proposal.

[2] The relevant subsection is Section 1.227(b)(1) which follows:

(b)(1) In broadcast cases, . . . "no application will be consolidated for hearing with a previously filed application or applications unless such application, or such application as amended if amended so as to require a new file number, is substantially complete and tendered for filing by whichever date is earlier: (i) The close of business on the day preceding the day the previously filed application or one of the previously filed applications is designated for hearing; or (ii) the close of business on the day preceding the day designated by public notice published in the Federal Register as the day any one of the previously filed applications is available and ready for processing.

should be considered in accepting its application and affirming the Bureau's decision because 92.7 is minority-owned. Drum, in its reply, contends that the minority status of 92.7's principals is irrelevant to the instant issue in that basic qualifications must be met before a comparative evaluation can occur. Drum further relies on *Henry M. Lesher*, 41 RR 2d 1593, (1977), to points out that the Commission "has been willing to accept applications for filing which ommitted certain information where the omissions were caused by clerical error and where the applicant made subsequent good faith efforts to correct the deficiencies promptly", but that 92.7, by making no effort to correct its error, did not act in good faith.

7. 92.7's application did contain a complete engineering section which, while not corresponding to applicant's optioned site, was, absent any evidence to the contrary, submitted to the Commission in good faith. No information was omitted in 92.7's application, thus distinguishing it from *Lesher*. Applicant's engineering study was performed and submitted in a complete and timely fashion with the application but, by mistake, it applied to the wrong site; one on which applicant did not have an option. This fact was revealed by the applicant without any prompting by the Commission's staff. Had 92.7 filed its application on the cut-off date lacking any engineering, the application would have been incomplete, returned as unacceptable for filing and could have not been cured by amendment. 92.7's application was complete and the error could have been corrected by minor amendment prior to its rejection. Since the application was complete when filed, it complies with Section 1.227(b) of the Rules. Under these circumstances, review of the action taken by the Chief, Broadcast Bureau, is not warranted and Drum's petition will be denied.

8. However, a question of timeliness arises. 92.7 stated that it discovered its error as to site location and engineering data within a few weeks of tender of the application. Yet it did not amend its application to reflect these facts until it petitioned for reconsideration, several months after discovering the error. Section 1.65 of the Commission's Rules requires that . . . "Whenever the information furnished in the pending application is no longer substantially accurate and complete in significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of his application so as to furnish such additional or corrected information as may be appropriate." 92.7 was not prompt in furnishing this information nor did it show good cause for its failure to comply with Section 1.65. Considering the significance of the matter to be amended and the tardiness with which the information was furnished, a Section 1.65 issue will be specified. *Bexar Broadcasting Co., Inc.*, 16 FCC 2d 641, 15 RR 2d 772 (Rev. Bd. 1969).

9. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

10. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

11. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Drum is financially qualified to construct and operate the proposed station.

2. To determine the efforts made by Drum to ascertain the community needs and problems of the area to be served and the means by which the applicant proposed to meet those needs and problems.

3. To determine with respect to 92.7:

(a) whether applicant has continued to keep the Commission advised of "substantial and significant changes" in its application as required by Section 1.65 of the Commission's Rules; and

(b) the effect of the facts adduced pursuant to (a), above, upon the applicant's basic and/or comparative qualifications

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

12. It is further ordered, that the application for review filed by Drum is denied.

13. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

14. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594(g) of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rules, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 80-35993 Filed 11-17-80; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10218; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before November 28, 1980. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Commemts shall discuss with particular allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters,

importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreements Nos.: 90-18, 191-9, 192-8, and 7190-8.

Filing party: Charles F. Warren, Esquire, Warren & Associates, P.C., 1100 Connecticut Avenue, NW., Washington, D.C. 20036.

Summary: Agreements Nos. 90-18, 191-9, 192-8, and 7190-8 would clarify and amend the voting procedures of the Java/New York Rate Agreement, Java/Pacific Rate Agreement, Deli/Pacific Rate Agreement, and Deli/New York Rate Agreement.

By Order of the Federal Maritime Commission.

Dated: November 13, 1980.

Francis C. Hurney,

Secretary.

[FR Doc. 80-35914 Filed 11-17-80; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or grains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than December 5, 1980.

A. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

United Missouri Bancshares, Inc., Kansas City, Missouri (mortgage and insurance activities; Missouri) to engage through its subsidiary, United Missouri Mortgage Company, in the business of originating residential loans in the St. Louis area. These loans will be sold in the primary and secondary markets. The subsidiary will also write credit life, credit accident and health insurance, mortgage protection life and mortgage protection disability insurance, directly related to extensions of credit. These activities will be carried on by the Applicant's subsidiary from an office in Ferguson, Missouri, serving St. Louis County, Missouri, and northern Jefferson County, Missouri.

B. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President), 400 Sansome Street, San Francisco, California 94120:

Wells Fargo & Company, San Francisco, California (finance activities; Central United States): to engage, through its subsidiary, Wells Fargo Business Credit, in making or acquiring loans or other extensions of credit, including commercial loans secured by a borrower's inventory, accounts receivable, or other assets; servicing loans in accordance with the Board's Regulation Y. These activities would be conducted from an office in Chicago, Illinois, servicing Minnesota, Wisconsin, Illinois, Iowa, Indiana, Michigan, Ohio, Kentucky, and West Virginia.

C. *Federal Reserve Bank of Boston* (Richard E. Randall, Vice President), 30 Pearl Street, Boston, Massachusetts 02106:

Industrial National Corporation, Providence, Rhode Island (mortgage banking activity; Rhode Island); to retain, through its subsidiary Industrial National Mortgage Company, certain real estate mortgage loans previously made by its subsidiary Westminster Properties, Inc. These activities would be conducted from offices in Providence, Rhode Island. The service area will be the entire United States. Comments on this application must be received by December 4, 1980.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, November 7, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-35845 Filed 11-17-80; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Notice of Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than December 10, 1980.

A. *Federal Reserve Bank of Kansas City* (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

Central Colorado Company, C.C.B., INC., and Central Bancorporation, Inc., Denver, Colorado (industrial banking activities; Colorado): to engage through its subsidiary, Central Industrial Bank,

in operating an industrial bank in accordance with the Board's Regulation Y. These activities would be conducted from an office in Aurora, Colorado, serving the Denver RMA.

B. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Security Pacific Corporation, Los Angeles, California (commercial lending activities; United States): to expand the activities of its subsidiary, Security Pacific Clearing & Services Corp., to include making or acquiring, for its own account or for the account of others, commercial loans and other extensions of credit. These activities would be conducted from Security Pacific Clearing & Services Corp.'s offices located in New York, New York; Los Angeles, California; Chicago, Illinois; Pittsburgh, Pennsylvania; and Memphis, Tennessee, serving the United States.

C. *Federal Reserve Bank of Chicago* (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

Suburban Bancorp, Inc., Palatine, Illinois, (mortgage banking activities: Chicago Northwest Suburban area): to engage, through its subsidiary, Suburban Mortgage Corporation, in making, acquiring, and servicing loans and other extensions of credit secured by real estate mortgages. The corporation would act in a brokerage and servicing capacity, and may also arrange interim construction financing and service a purchased portfolio. These activities would be conducted from the office of Applicant's subsidiary bank in Palatine, Illinois, serving the suburban area northwest of Chicago, Illinois.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, November 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-35854 Filed 11-17-80; 8:45 am]

BILLING CODE 6210-01-M

Citizens Holding Co.; Formation of Bank Holding Company

Citizens Holding Company, Waverly, Tennessee, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Citizens Bank of Waverly, Waverly, Tennessee. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 10, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-35843 Filed 11-17-80; 8:45 am]

BILLING CODE 6210-01-M

Guardian Bancorp, Inc.; Formation of Bank Holding Company

Guardian Bancorp, Inc., Salt Lake City, Utah, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring approximately 99.8 percent of the voting shares of Guardian State Bank, Salt Lake City, Utah. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 5, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 7, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-35844 Filed 11-17-80; 8:45 am]

BILLING CODE 6210-01-M

The Hongkong and Shanghai Banking Corp.; Leasing Activities

The Hongkong and Shanghai Banking Corporation, Hong Kong, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR § 225.4(b)(2)), for permission to engage through its subsidiary U.S. Concord, Inc., in the activity of making leases of personal property that are the functional equivalent of extensions of credit, and acting as agent, broker, or advisor for such leases. These activities would be performed from an office of Applicant's subsidiary in Larchmont, New York, serving the entire United States. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 5, 1980.

Board of Governors of the Federal Reserve System, November 7, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-35853 Filed 11-17-80; 8:45 am]

BILLING CODE 6210-01-M

Commerce Bancorporation, Inc.; Formation of Bank Holding Company

Commerce Bancorporation, Inc., McLoud, Oklahoma, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of Commerce, McLoud, Oklahoma. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 10, 1980.

J. A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-35900 Filed 11-17-80; 8:45 am]

BILLING CODE 6210-01-M

Independent Bank Corp.; Acquisition of Bank

Independent Bank Corporation, Ionia, Michigan, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire 100 per cent of the voting shares of New Peoples State Bank of Leslie, Leslie, Michigan. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than December 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 10, 1980.

J. A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-35901 Filed 11-17-80; 8:45 am]

BILLING CODE 6210-01-M

Seafirst Corp.; Proposed Acquisition of Arden Mortgage Service Corporation

Seafirst Corporation, Seattle, Washington, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Arden Mortgage Service Corporation, Walnut Creek, California.

Applicant states that the proposed subsidiary would engage in mortgage banking activities and origination and servicing of mortgage loans. These activities would be performed from offices of Applicant's subsidiary in Fairfield, Fresno, San Jose, Santa Rosa, Walnut Creek, Irvine, Pleasant Hills, Sacramento, all in California, and the geographic area to be served is the state of California. Such activities have been specified by the Board in section 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of section 225.4(b).

Interested persons may express their views on the question whether consumption of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 10, 1980.

Board of Governors of the Federal Reserve System, November 10, 1980.

J. A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-35902 Filed 11-17-80; 8:45 am]

BILLING CODE 6210-01-M

South Dakota Bancshares, Inc., Acquisition of Bank

South Dakota Bancshares, Inc., Pierre, South Dakota, has applied for the Board's approval under § 3(a)(3) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(3)) to acquire directly and indirectly 95.3 percent of the voting shares of Sully County State Bank, Onida, South Dakota. The factors that are considered in acting on the application are set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than December 10, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 10, 1980.

J. A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-35903 Filed 11-17-80; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Blocker Drilling and Marine Co.; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Blocker Drilling & Marine Co. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Buttes Gas and Oil Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait

designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-35949 Filed 11-17-80; 8:45 am]

BILLING CODE 6750-01-M

Damson Oil Corp.; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Damson Oil Corporation is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all assets of Louden Properties Co. from Fred J. Russell. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Mr. Russell. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: October 29, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-35948 Filed 11-17-80; 8:45 am]

BILLING CODE 6750-01-M

Enterprise Products Co., Inc.; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Enterprise Products Company, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all assets of Wanda Petroleum Company from Dow Chemical Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: October 10, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-35950 Filed 11-17-80; 8:45 am]

BILLING CODE 6750-01-M

[E-Z Serve Inc.; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: E-Z Serve, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of Winston Refining Company from McLean Trucking. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by both parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202) 532-3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-35952 Filed 11-17-80; 8:45 am]

BILLING CODE 6750-01-M

North Engineering Industries; Early Termination of the Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the waiting period of the premerger notification rules.

SUMMARY: Northern Engineering Industries Limited is granted early termination of the waiting period by law and the premerger notification rules with respect to the proposed acquisition of all stock of Extel Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Northern. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: October 22, 1980.

FOR FURTHER INFORMATION CONTACT: Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade

Commission, Washington, D.C. 20580, (202) 523–3894.

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain merges or acquistions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 80-35851 Filed 11-17-80; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80N-0441]

Allegenic Products; Workshop on Standardization

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces that a workshop will be held to demonstrate laboratory procedures concerning the standardization of allergenic products.

DATES: The workshop will be held at 9 a.m. on January 13 and 14, 1981. Reservations by December 19, 1980.

ADDRESSES: The workshop will be held at the Bureau of Biologics, Bldg. 29, Rm. 115, National Institutes of Health, 880 Rockville Pike, Bethesda, MD 20205. The agenda for the workshop may be obtained from the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michael L. Hooten, Bureau of Biologics (HFB–620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Allergenic products are licensed biological products. The manufacture of these products is governed by applicable regulations published under the authority of the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act. These regulations include the additional standards for allergenic products published under Part 680 (21 CFR Part 680) of the biologics regulations.

In an effort to establish more precise standards for allergenic products, FDA's Bureau of Biologics, in collaboration with licensed manufacturers, is developing methods to determine the relative allergen content (potency) of allergenic products. The methods found most satisfactory will be proposed when appropriate as standard potency tests for incorporation into 21 CFR Part 680 of the regulations. For example, a standard potency test was proposed in the Federal Register of August 3, 1979 (44 FR 45642) that will require a determination of the quantity of antigen E present in short ragweed pollen extracts.

On September 10, 1979, FDA held a meeting with manufacturers to discuss the implementation of a collaborative study to determine the potency of allergenic products using the radioallergosorbent test (RAST) and isoelectric focussing (see 44 FR 44276). As a result of FDA's review of the data obtained from this collaborative study and discussions with manufacturers, FDA concludes that there is some uncertainty on how to perform test procedures such as the RAST test and how to analyze the results of these tests. Therefore, a workshop for manufacturers of allergenic products and other interested persons will be conducted by the Bureau of Biologics to demonstrate methods and equipment used in performing these tests and obtaining results. The workshop will include the use of current potency procedures that are available for conducting appropriate stability studies on allergenic products. Procedures to be discussed at the workshop will include methods of protein measurement, RAST, radialimmunodiffusion for detection of antigen E, isoelectric focussing, and skin testing. The agenda for the workshop may be obtained from the Dockets Management Branch (formerly the Hearing Clerk's office (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

The workshop will be held at 9 a.m. on January 13 and 14, 1981, at the Bureau of Biologics, Bldg. 29, Rm. 115, 8800 Rockville Pike, Bethesda, MD 20205. The workshop will include visits to the laboratory to observe demonstrations of methods and use of equipment. Because it will not be possible for a large number of persons to properly observe the demonstrations in the confines of a laboratory, FDA requests that each manufacturer send no more than two representatives, one of which may be from a testing or consulting laboratory used by the manufacturer. Persons planning to attend must make reservations by contacting Michael L. Hooten (address above) by December 19, 1980.

Dated: November 6, 1980.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 80-35700 Filed 11-17-80; 8:45 am]

BILLING CODE 4110-83-M

Social Security Administration

Changes in the Rate of Federal Participation and the Ceiling Limitations on Federal Funds for Guam, Puerto Rico, and the Virgin Islands

AGENCY: Social Security Administration, HHS.

ACTION: Notice.

SUMMARY: This notice reflects amendments to the Social Security Act contained in section 305 of the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272). The amendments permanently extend the increased ceilings and matching rate previously authorized for fiscal year 1979 by the Revenue Act of 1978 (Pub. L. 95–600).

The dollar ceilings for Puerto Rico, Guam, and the Virgin Islands under section 1108(a) of the Social Security Act effective with fiscal year 1979 and continuing are as follows:

Puerto Rico	$72,000,000
Guam	3,300,000
Virgin Islands	2,400,000

These ceilings are the maximum amounts of Federal funds available for the programs under Title I, IV–A, IV–E, X, XIV, and XVI (AABD) of the Social Security Act. They apply to assistance payments, administrative costs, training costs, and social services under these titles. The ceiling does not include costs for family planning and WIN services covered by section 1108(b).

In addition, for purposes of section 1118 the Federal Medical Assistance Percentage (FMAP) for Puerto Rico, Guam and the Virgin Islands is permanently set at 75 percent.

DATES: Effective October 1, 1979.

FOR FURTHER INFORMATION CONTACT: Jay Rowen, Director, Employability and Fiscal Policy Division, Office of Policy, Office of Family Assistance, Social Security Administration, Washington, D.C. 20024, (202) 755–1580.

(Catalog of Federal Domestic Assistance Program No. 13.808—Assistance Payments—Maintenance Assistance (State Aid))

Dated: October 30, 1980.

William J. Driver,

Commissioner of Social Security.

[FR Doc. 80-35910 Filed 11-17-80; 8:45 am]

BILLING CODE 4110-07-M

Contribution and Benefit Base, Quarter of Coverage Amount, Retirement Test Exempt Amounts, Average of the Total Wages, Formulas for Computing Benefits, and Extended Table of Benefit Amounts for 1981

AGENCY: Social Security Administration.

ACTION: Notice of Contribution and Benefit Base, Quarter of Coverage Amount, Retirement Test Exempt Amounts, Average of the Total Wages, Formulas for Computing Benefits, and Extended Table of Benefit Amounts for 1981.

SUMMARY: The Secretary has determined—

(1) the social security contribution and benefit base to be $29,700 for remuneration paid in 1981 and self-employment income earned in taxable years beginning in 1981;

(2) the amount of earnings a person must have to be credited with a quarter of coverage in 1981 to be $310;

(3) the monthly exempt amount under the social security retirement test for taxable years ending in calendar year 1981 to be $458.33 ⅓ for beneficiaries aged 65 and over and $340 for beneficiaries under age 65; and

(4) the average of the total wages for 1979 to be $11,479.46.

The formulas we use to compute the benefits for a worker and his or her family who first becomes eligible for benefits in 1981 are also described below.

Finally, a table reflecting the new higher average monthly wage and related benefit amounts made possible by the higher contribution and benefit base is also published. The table will be used primarily to compute the retirement benefits of workers who reached age 62 before 1979.

FOR FURTHER INFORMATION CONTACT: Harry Ballantyne, Office of the Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone (301) 594-2466.

SUPPLEMENTARY INFORMATION: Sections 203(f)(8), 213(d) and 230(a) of the Social Security Act (42 U.S.C. 403(f)(8), 413(d) and 430(a)) require the Security of Health and Human Services to publish in the Federal Register on of before November 1, 1980, the contribution and benefit base, the amount of earnings required for a quarter of coverage, and the retirement test exempt amount, for calendar year 1981. In addition, section 215(a)(1)(D) requires that we publish by November 1, 1980 the formula for computing a primary insurance amount for workers who become eligible for benefits or die in 1981, and section 203(a)(2)(c) requires that we publish by November 1, 1980 the formula for computing a family's maximum benefits for families of workers who become eligible for old age benefits or die in 1981.

Contribution and Benefit Base

The contribution and benefit base serves two purposes:

(1) It is the maximum annual amount of earnings on which social security taxes are paid.

(2) It is the maximum annual amount used in figuring a person's social security benefits.

Section 230(c) of the Social Security Act specifies that the amount of the contribution and benefit base for 1981 is $29,700.

Average of the Total Wages for 1979

The determination of the average wage figure for 1979 is based on the 1978 average wage figure of $10,556.03 announced in the Federal Register on November 1, 1979 (44 FR 62956) along with the percentage increase in average wages from 1978 to 1979 measured by annual wage data tabulated by the Internal Revenue Service (IRS). The average amounts of wages calculated directly from IRS data were $10,840.68 and $11,789.01 for 1978 and 1979, respectively. To determine an average wage figure for 1979 at a level that is consistent with the series of average wages for 1951–1977 (published December 29, 1978 at 43 FR 61016), we multiplied the 1978 average wage figure of $10,556.03 by the percentage increase in average wages from 1978 to 1979 (based on IRS data) as follows (with the result rounded to the nearest cent):

Average wage for 1979 = $10,556.03 × 11,789.01 ÷ $10,840.68 = $11,479.46

Therefore, the average wage for 1979 is determined to be $11,479.46.

Quarter of Coverage Amount

Computation. The 1981 amount of earnings required for a quarter of coverage is $310. A quarter of coverage is the basic unit for determining whether a worker is insured under the social security program. For years before 1978, an individual generally was credited with a quarter of coverage for each quarter in which wages of $50 or more were paid, or for which $100 or more of self-employment income were credited, to the individual. Beginning in 1978, wages generally are no longer reported quarterly; annual reports are made. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 (Pub. L. 95-216) amended section 213(d) of the Social Security Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978 (up to a maximum of 4 quarters of coverage for the year). Section 213(d) also provides that this $250 amount shall be redetermined each year and any change published in the Federal Register no later than November 1 of the year preceding the year for which the change is effective. Under the prescribed formula, the quarter of coverage amount for 1981 shall be equal to the 1978 amount of $250 multiplied by the ratio of (1) the average amount, per employee, of total wages for calendar year 1979 to (2) the average amount of those wages reported for calendar year 1976. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Average wages. The average wage for calendar year 1976 was previously determined to be $9,226.48. This was published in the Federal Register on December 29, 1978, at 43 FR 61016. The average wage for calendar year 1979 has been determined to be $11,479.46 as stated in a previous section.

Amount. The ratio of the average wage for 1979, $11,479.46 compared to 1976, $9,226.48, is 1.244186. Multiplying the 1978 quarter of coverage amount of $250 by the ratio of 1.244186 produces the amount of $311.05 which must then be rounded to $310. Accordingly, the quarter of coverage amount for 1981 is $310.

Retirement Test Exempt Amount

Computation. The 1981 amount of $458.33 ⅓ for the retirement test monthly exempt amount for beneficiaries aged 65 through 71 is stated in the law. The corresponding annual retirement test exempt amount for those individuals is $5,500. Section 301 of the Social Security Amendments of 1977 amended section 203 of the Social Security Act to provide a higher retirement test exempt amount for beneficiaries aged 65 through 71 than for those beneficiaries under age 65.

The monthly exempt amount of $340 for beneficiaries under age 65 is determined according to a formula specified in the law, which automatically produces a mathematical result based upon reported statistics. Section 203(f)(8) of the Social Security

Act provides that the retirement test monthly exempt amount for 1981 shall be equal to the 1980 amount of $310 multiplied by the ratio of (1) the average amount, per employee, of the wages of all employees reported under the program for calendar year 1979 to (2) the average amount of those wages reported for calendar year 1978. The section further provides that if the amount so determined is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

There is no limit on the amount an individual aged 72 or over may earn and still receive social security benefits. (Beginning in 1982, the age at which the retirement test no longer applies will be reduced from age 72 to age 70.)

Average Wages. Average wages for this purpose are determined in the same way as for a quarter of coverage. Therefore, the ratio of the average wages for 1979, $11,479.46, compared to 1978, $10,556.03, is 1.087479.

Exempt amount for persons under age 65. Multiplying the 1980 retirement test monthly exempt amount of $310 by the ratio of 1.087479 produces the amount of 337.12. This must then be rounded to $340. Accordingly, the retirement test monthly exempt amount for persons under age 65 is determined to be $340 for 1981. The corresponding annual exempt amount for 1981 is $4,080.

Computing Benefits After 1978

The Social Security Amendments of 1977 changed the formula for determining an individual's primary insurance amount after 1978. This basic new formula is based on "wage indexing", and was fully explained with interim regulations published in the Federal Register on December 29, 1978 at 43 FR 60877. It generally applies when a worker after 1978 attains age 62, becomes disabled, or dies before age 62. This formula uses the worker's earning after they have been adjusted, or "indexed," in proportion to the increase in average wages of all workers. Using this method, we determine the worker's "average indexed monthly earnings." We then compute the primary insurance amount, using the worker's "average indexed monthly earnings" and also adjust the computation formula to reflect changes in general wage levels.

Average indexed monthly earnings. To assure that a worker's future benefits reflect the general rise in the standard of living that occurs during their working lifetime, we adjust or "index" the worker's past earnings to take into account the change in general wage levels that has occurred during the worker's years of employment. These adjusted earnings are then used to compute the worker's primary insurance amount.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled, or dying before attaining age 62, in 1981, we divide the average of the total wages for 1979, $11,479.46, by the average of the total wages for each year prior to 1978 in which the worker had earnings. We than multiply the actual wages and self-employment income credited for those years by this ratio to obtain the worker's adjusted earnings for that year. After determining the number of years we must use to compute the primary insurance amount, we pick those years with highest indexed earnings, total those indexed earnings and divide by the total number of months in those years. This figure is rounded down to the next lower dollars amount, and becomes the average indexed monthly earnings figure to be used in computing the worker's primary insurance amount for 1981.

Computing the primary insurance amount. The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these protions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. The amount for 1981 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1979, $11,479.46, and for 1977, $9,779.44. These results are then rounded to the nearer dollars. For 1981 the ratio is 1.173836. Multiplying the 1979 amounts of $180 and $1,085 by 1.173836 produces the amounts of $211.29 and $1,273.61 These must then be rounded to $211 and $1,274. Accordingly, the portions of the average indexed monthly earnings to be used in 1981 are determined to be the first $211, the amount between $211 and $1,274, and the amount over $1,274.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 1981 or who die in 1981 before becoming eligible for benefits, we will compute their primary insurance amount by adding the following:

(a) 90 percent of the first $211 of their average indexed monthly earnings, plus

(b) 32 percent of the average indexes monthly earnings over $211 and through $1,274, plus

(c) 15 percent of the average indexed monthly earnings over $1,274.

This amount is then rounded to the next higher multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 215(a) of the Social Security Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

The 1977 Amendments continued the long established policy of limiting the total monthly benefits which a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits which may be paid to a worker's family. The 1980 Amendments (PL 96-265) established a new formula for computing the maximum benefits payable to the family of a disabled worker. This new formula is to be applied to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, based on a disability that began after 1978. We are preparing a Notice of Proposed Rule Making for publication in the Federal Register that explains this new formula. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, the family maximum payable is computed the same as the old age and survivor family maximum.

Computing the old age and survivor family maximum. The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. The amounts for 1981 are obtained by multiplying the 1979 amounts by the ratio between the average of the total wages for 1979, $11,479.46, and for 1977, $9,779.44. This amount is then rounded to the nearer dollar. For 1981, the ratio is 1.173836. Multiplying the amounts of $230, $332,

and $433 by 1.173836 produces the amounts of $269.98, $389.71 and $508.27. These amounts are then rounded to $270, $390, and $508. Accordingly, the portions of the primary insurance amounts to be used in 1981 are determined to be the first $270, the amount between $270 and $390, the amount between $390 and $508, and the amount over $508.

Consequently, for the family of a worker who was entitled to disability benefits before July 1, 1980, or becomes age 62 or dies in 1981, the total amount of benefits payable to them will be computed so that it does not exceed:

(a) 150 percent of the first $270 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $270 through $390, plus

(c) 134 percent of the worker's primary insurance amount over $390 through $508, plus

(d) 175 percent of the worker's primary insurance amount over $508.

This amount is then rounded to the next higher multiple of $.10 if it is not already a multiple of $.10. This formula and the adjustments we have described are contained in section 203(a) of the Social Security Act (42 U.S.C. 403(a)).

Extension of Benefit Table Effective January 1981

The following is an extension of the Table for Determining Primary Insurance Amount and Maximum Family Benefits provided in section 215(a)(5) of the Social Security Act. This extension reflects the higher average monthly wage and related benefit amounts now possible under the increased contribution and benefit base published by this Notice effective January 1981 in accordance with section 215(i) of the Social Security Act. The extended portion of the benefit table shown here will apply primarily to benefits based on earnings of workers who reached age 62 before 1979.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802–13.805, and 13.807 Social Security Programs.)

Dated: November 13, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Table for Determining Primary Insurance Amount and Maximum Family Benefits Beginning January 1980

I		II	III		IV	V
(Primary insurance benefit		(Primary insurance amount effective for June 1979)	(Average monthly wage)		(Primary insurance amount)	(Maximum family benefits)
If an individual's primary insurance benefits (as determined under subsec. (d)) is—		Or his primary insurance amount (as determined under subsec. (c)) is—	Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceeding paragraphs of this subsection shall be—	And the maximum amounts of benefits payable (as provided in sec. 203(a)) on the basis of his wages and self-employment income shall be—
At least—	But not more than—		at least—	But not more than—		
			$2,161	$2,165	$1,041.10	$1,822.00
			2,166	2,170	1,042.10	1,823.70
			2,171	2,175	1,043.10	1,825.50
			2,176	2,180	1,044.10	1,827.20
			2,181	2,185	1,045.10	1,829.00
			2,186	2,190	1,046.10	1,830.70
			2,191	2,195	1,047.10	1,832.50
			2,196	2,200	1,048.10	1,834.20
			2,201	2,205	1,049.10	1,836.00
			2,206	2,210	1,050.10	1,837.70
			2,211	2,215	1,051.10	1,839.50
			2,216	2,220	1,052.10	1,841.20
			2,221	2,225	1,053.10	1,843.00
			2,226	2,230	1,054.10	1,844.70
			2,231	2,235	1,055.10	1,846.50
			2,236	2,240	1,056.10	1,848.20
			2,241	2,245	1,057.10	1,850.00
			2,246	2,250	1,058.10	1,851.70
			2,251	2,255	1,059.10	1,853.50
			2,256	2,260	1,060.10	1,855.20
			2,261	2,265	1,061.10	1,857.00
			2,266	2,270	1,062.10	1,858.70
			2,271	2,275	1,063.10	1,860.50
			2,276	2,280	1,064.10	1,862.20
			2,281	2,285	1,065.10	1,864.00
			2,286	2,290	1,066.10	1,865.70
			2,291	2,295	1,067.10	1,867.50
			2,296	2,300	1,068.10	1,869.20
			2,301	2,305	1,069.10	1,871.00
			2,306	2,310	1,070.10	1,872.70
			2,311	2,315	1,071.10	1,874.50
			2,316	2,320	1,072.10	1,876.20
			2,321	2,325	1,073.10	1,878.00
			2,326	2,330	1,074.10	1,879.70
			2,331	2,335	1,075.10	1,881.50
			2,336	2,340	1,076.10	1,883.20
			2,341	2,345	1,077.10	1,885.00
			2,346	2,350	1,078.10	1,886.70
			2,351	2,355	1,079.10	1,888.50
			2,356	2,360	1,080.10	1,890.20
			2,361	2,365	1,081.10	1,892.00
			2,366	2,370	1,082.10	1,893.70
			2,371	2,375	1,083.10	1,895.50
			2,376	2,380	1,084.10	1,897.20
			2,381	2,385	1,085.10	1,899.00
			2,386	2,390	1,086.10	1,900.70
			2,391	2,395	1,087.10	1,902.50
			2,396	2,400	1,088.10	1,904.20
			2,401	2,405	1,089.10	1,906.00
			2,406	2,410	1,090.10	1,907.70
			2,411	2,415	1,091.10	1,909.50
			2,416	2,420	1,092.10	1,911.20
			2,421	2,425	1,093.10	1,913.00
			2,426	2,430	1,094.10	1,914.70
			2,431	2,435	1,095.10	1,916.50
			2,436	2,440	1,096.10	1,918.20
			2,441	2,445	1,097.10	1,920.00
			2,446	2,450	1,098.10	1,921.70
			2,451	2,455	1,099.10	1,923.50
			2,456	2,460	1,100.10	1,925.20
			2,461	2,465	1,101.10	1,927.00
			2,466	2,470	1,102.10	1,928.70
			2,471	2,475	1,103.10	1,930.50

[FR Doc. 80-36032 Filed 11-14-80; 12:02 pm]

BILLING CODE 4110-07-M

DEPARTMENT OF THE INTERIOR

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before November 7, 1980. Pursuant to section 1202.13 of 36 CFR Part 1202, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, Heritage Conservation and Recreation Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by December 3, 1980.

Carol Shull,

Acting Chief, Registration Branch.

ARIZONA

Pima County

Tucson, *West University Historic District,* Roughly bounded by Speedway Blvd., 6th St., Park and Stone Aves.

ARKANSAS

Pulaski County

Little Rock, *Retan, Albert, House,* 506 N. Elm St.

Scott County

Waldron, *Forrester, John T., House,* 115 Danville St.

Sevier County

DeQueen, *Hayes Hardware Store,* 314 DeQueen St.

DELAWARE

Kent County

Felton, *Felton Railroad Station,* E. Railroad Ave.

Wyoming, *Wyoming Railroad Station,* E. Railroad Ave.

New Castle County

Wilmington, *Baltimore and Ohio Railroad Passenger Station,* 1 S. Market St.

New Castle vicinity, *Monterey,* N of Odessa on Bayview Rd.

KENTUCKY

Bourbon County

Paris vicinity, *Kennedy, Thomas, House,* SE of Paris on Paris-Winchester Rd.

Calloway County

Murray, *Linn, Will, House,* 103 N. 6th St.

Fayette County

Lexington, *Bell Court Neighborhood Historic District,* Roughly bounded by RR tracks, Main St., Boonesboro and Walton Aves.

Lexington, *McCauley, John, House,* 319 Lexington Ave.

Lexington vicinity, *Cave Place,* W of Lexington

Greenup County

South Portsmouth vicinity, *Portsmouth Earthworks, Group A (15 Gp 1),* SW of South Portsmouth

Henry County

Eminence, *Crutcher House,* Mulberry Pike

Hopkins County

Nebo vicinity, *Archeological Site 15 Hk 79,* SW of Nebo

Jefferson County

Louisville, *Brandeis, Albert S., Elementary School,* 1001 S. 26th St.

Louisville, *Broadway Temple A.M.E. Zion Church,* 662 S. 13th St.

Louisville, *Chestnut Street Baptist Church,* 912 W. Chestnut St.

Louisville, *Engelhard House,* 1060 Boxter Ave.

Louisville, *New Enterprise Tobacco Warehouse,* 925 W. Main St.

Louisville, *Roosevelt, Theodore, Elementary School (Duncan Street School)* 222 N. 17th St.

Louisville, *Rose Hill,* 1835 Hampden Ct.

Louisville, *St. Peter's German Evangelical Church,* 1231 W. Jefferson St.

Louisville, *Shelby Park Branch Library,* 600 E. Oak St.

Louisville, *South Central Bell Company Office Building,* 521 W. Chestnut St.

Jessamine County

JESSAMINE COUNTY MULTIPLE RESOURCE AREA. This area includes: Nicholasville, *Nicholasville Historic District,* Main and Maple Sts.; Hall vicinity, *Curley's Distillery,* Off U.S. 27; Keene, *Keene Springs Hotel; Macedonia Baptist Church;* Keene vicinity, *Burrier House,* Keene-Troy Rd.; *Hearts Ease,* Off U.S. 68; *Hughes House,* KY 169; *January, Ephraim House,* Keene-Troy Rd.; *Lancaster, John, House,* KY 169; *Locust Grove Stock Farm,* Keene-Troy Rd.; *Lowry, William C., House,* U.S. 68; *Mt. Pleasant Baptist Church,* N of Keene on Keene-Troy Rd.; *O'Neal, George, House,* Off U.S. 68; *Pleasant Grove,* Keene-Troy Rd.; *Whitehall,* Troy Rd.; *Woodland,* U.S. 68; Nicholasville, *Bethel A.M.E. Church,* York and Walnut Sts.; *Bethel Academy,* 207 S. 3rd St.; *Bronaugh, J. S., House,* Walnut and 2nd Sts.; *Jessamine County Courthouse,* 101 N. Main St.; *Metcalf, Rev. John, House,* 209 1st St.; *Silver Hill,* 303 S. Main St.; *Walker, Gen. George, House,* 305 W. Oak St.; *West, Thomas Elliott, House,* Walnut and 2nd Sts; Nicholasville vicinity, *Barkley House,* U.S. 68; *Barkley, Isaac, House,* Off U.S. 68; *Bryan, Samuel, House,* Brannon Rd.; *Byrant House,* Off U.S. 27; *Butler's Tavern,* Off U.S. 27; *Cedar Grove,* KY 169; *Chrisman, Joseph, House,* U.S. 27; *Duncan, J. W., House,* KY 169; *Grubb, A., House; Hanly Post Office,* U.S. 27; *Hoover House,* U.S. 27; *Hunter, John, House,* Chrisman Mill Rd.; *Little Hickman School; Knight, Grant, House,* KY 169; *Marshall-Bryan House,* U.S. 27; *Martin, James G., House,* Tates Creek Rd.; *Mathews House,* Shun Pike; *Muir House,* Old Railroad Lane; *Muir House,* Off KY 1541; *Nave-Brown House,* Nicholasville-Wilmore Rd.; *Neal, Elijah, House,* U.S. 68 and KY 169; *Overstreet, Pink, House,* KY 1268; *Providence,* Brannon Rd.; *Providence Church,* U.S. 27; *Rice-Price House,* U.S. 27; *Roberts Chapel,* U.S. 27; *Robinson House,* Shun Pike; *Sandy Bluff,* Shun Pike; *Scott House,* Off U.S. 27; *Scott, John Harvey, House,* Off U.S. 27; *Shady Grove,* Off U.S. 27; *Shanklin House,* KY 169; *Sunnyside,* U.S. 27; *Taylor House,* Taylor Rd.; *Thornwood,* Baker Lane; *Venable-Todhunter Houses,* Tates Creek Rd.; *Young, A. M., House; Young, W. C., House,* Off U.S. 27; Wilmore, *Asbury College Administration Building,* KY 29; *Morrison-Kenyon Library,* KY 29; Wilmore vicinity, *Bicknell House,* KY 29; *Bryan, George and Betty, House,* Off U.S. 68 and KY 29; *Curd House,* Off KY 29; *Young House,* Off KY 29.

Todd County

Allensville, *Allensville Historic District,* Main and Allensworth Aves.

Wayne County

Monticello, *Heninger Building,* 103 N. Main St.

LOUISIANA

Avoyelles Parish

Evergreen, *Bayou Rouge Baptist Church,* Church and College Sts.

Catahoula Parish

Harrisonburg, *Sargent House,* Catahoula St.

East Baton Rouge Parish

Baton Rouge, *Mount Hope Plantation House,* 8151 Highland Rd.

East Feliciana Parish

Jackson, *Jackson Historic District,* Roughly bounded by Institute Dr., LA 314, Horton and Race Sts.

Lafayette Parish

Lafayette, *Holy Rosary Institute,* 421 Carmel Ave.

Orleans Parish

New Orleans, *D'Aquin Brothers Warehouse,* 322-326 Lafayette St.

Rapides Parish

Alexandria, *St. Francis Xavier Cathedral,* 626 4th St.

Red River Parish

Coushatta, *Planter's Hotel,* Carroll St.

St. James Parish

Convent, *Poche, Judge Felix, Plantation House,* River Rd.

St. Landry Parish

Grand Coteau vicinity, *Frozard Plantation House,* 3 mi. S of Grand Coteau off LA 93

West Feliciana Parish

St. Francisville vicinity, *Rosale Plantation,* N of St. Francisville off U.S. 61

MARYLAND

Baltimore (independent city)

Wilkens-Robins Building, 308–312 W. Pratt St.

Talbot County

Easton vicinity, *Old Bloomfield*, W of Easton on Bloomfield Rd.
St. Michaels, *Cannonball House*, 200 Mulberry St.

MASSACHUSETTS

Hampden County

Holyoke, *Holyoke Canal System*, Between Front and South Sts., and Connecticut River
Springfield, *Gunn and Hubbard Blocks*, 463–477 State St.
Springfield, *Water Shops Armory*, 1 Allen St.

Plymouth County

Norwell vicinity, *Tack Factory, The*, SW of Norwell at 49 Tiffany Rd.

Suffolk County

Boston, *BOSTON THEATRE MULTIPLE RESOURCE AREA*. This area includes: *Beach-Knapp District*, Roughly bounded by Harrison Ave., Washington, Kneeland and Beach Sts.; *Liberty Tree District*, Roughly bounded by Harrison Ave., Washington, Essex and Beach Sts.; *Piano Row District*, Boston Common, Park Sq., Boylston Pl. and Tremont St.; *West Street District*, West St.; *Boston Edison Electric Illuminating Company*, 25–39 Boylston St.; *Boston Young Men's Christian Union*, 48 Boylston St.; *Boylston Building*, 2–22 Boylston St.; *Dill Building*, 11–25 Stuart St.; *Hayden Building*, 681–683 Washington St.; *Metropolitan Theatre*, 252–272 Tremont St.; *Shubert, Sam S., Theatre*, 263–265 Tremont St.; *Wilbur Theatre*, 244–250 Tremont St.; *Wirth, Jacob, Buildings*, 31–39 Stuart St.

Suffolk County

Chelsea, *Chelsea Square Historic District*, Broadway, Medford, Tremont, Winnisimmet, Cross Park and Beacon Sts.

Worcester County

Webster, *Eddy Block*, 119—131 Main St. and 4 Davis St.
Webster, *Shumway Block*, 112—116 Main St.
Webster, *Spaulding Block*, 141—143 Main St.

NEBRASKA

Antelope County

Neligh, *St. Peter's Episcopal Church*, 411 L St.

Saline County

Crete, *College Hill Historic District*, Roughly bounded by Juniper, 15th, Boswell and 8th Sts.

NEVADA

Douglas County

Minden vicinity, *Home Ranch*, W of Minden

NEW JERSEY

Essex County

Newark, *Newark Metropolitan Airport Buildings*, Jct. of U.S. 22/1/9 and Port Rd.
Newark, *St. Joseph's Roman Catholic Church, School and Rectory*, W. Market St.

Middlesex County

Perth Amboy, *Perth Amboy City Hall and Surveyor General's Office*, 260 High St.

Monmouth County

Red Bank, *Shrewsbury Township Hall*, 51 Monmouth St.

Union County

Westfield, *Westfield Fire Headquarters*, 405 N. Avenue W.

NEW MEXICO

Bernalillo County

Albuquerque, *Ohlrau House*, 818, 820—820 ½ Arno St., SE.

NEW YORK

Erie County

Buffalo, *Lafayette High School*, 370 Lafayette Ave.

Franklin County

Paul Smiths, *Smith's, Paul, Hotel Store*, Paul Smith's College campus

Putnam County

Brewster vicinity, *Ludington Mill Site (A079–02–0001)* NW of Brewster

Tioga County

Owego, *Owego Central Historic District*, North Ave., Park, Main, Lake, Court, and Front Sts.

NORTH CAROLINA

Currituck County

Poplar Branch vicinity, *Baum Site (31CK9)* N of Poplar Branch

PENNSYLVANIA

Beaver County

New Brighton, *Armory, The (New Brighton)* 610 3rd Ave.

Chester County

Honey Brook, *General Wayne Inn*, Main St.

Dauphin County

Dauphin, *Bell Hall*, 300 Swatara St.
Harrisburg, *See, William, Building*, 319 Market St.
Lykens, *G.A.R. Building*, 628 N. 2nd St.

Fayette County

Uniontown vicinity, *Springer House*, N of Uniontown off U.S. 40

Franklin County

Chambersburg, *Fisher-Brand Commercial Building*, 123–125 S. Main St.

Indiana County

Indiana, *Graff's Market*, 27 N. 6th St.

Luzerne County

Wilkes-Barre, *Comerford Theater*, 71 Public Sq.

Montgomery County

Norristown vicinity, *Morris, Anthony, House*, N of Norristown on Stump Hall Rd.
Plymouth Meeting vicinity, *Cold Point Historic District*, I–276, Butler Pike, Militia Hill and Narcissa Rds.
Souderton, *Landis-Souder and Crouthamel Building*, 14 Main St.

Northampton County

Easton, *Easton House*, 167–169 Northampton St.
Easton, *Heller, William Jacob, House*, 501 Mixsell St.

Philadelphia County

Philadelphia, *Franklin Hose Company No. 20*, 730–732 S. Broad St.
Philadelphia, *Leidy, Dr. Joseph, House*, 1319 Locust St.
Philadelphia, *Princeton Club*, 1221–1223 Locust St.
Philadelphia, *Shedwick, John, Development Houses*, 3433–3439 Lancaster Ave.

TEXAS

Harris County

Houston, *Courtlandt Place Historic District*, 2–25 Courtlandt Pl.

Runnels County

Ballinger, *Van Pelt House*, 209 10th St.

Travis County

Austin vicinity, *Walnut Creek Archeological District*, N of Austin

Wichita County

Wichita Falls, *Weeks House*, 2112 Kell Blvd.

WASHINGTON

Benton County

Kennewick vicinity, *Bateman Island Archeological Site* (45 BN 161) NW of Kennewick

WISCONSIN

Walworth County

Lake Geneva vicinity, *Meyerhofer Cobblestone House*, E of Lake Geneva on Townline Rd.

WEST VIRGINIA

Logan County

Blair vicinity, *Battle of Blair Mountain Site*, SW of Blair on WV 17

[FR Doc. 80-35731 Filed 11-17-80; 8:45 am]
BILLING CODE 4310-03-M

Bureau of Land Management

[Phoenix 075415 et al.]

Arizona; Order Providing for Opening of Public Lands

Note.—This document corrects FR Doc. 80-35729 printed in the issue of November 17, 1980 and reprints the text of the order.

1. In exchange of lands made under the provisions of Section 8 of the Act of June 28, 1934 (49 Stat. 1272, as amended, 43 U.S.C. 315g), the following lands have been reconveyed to the United States under the serial numbers listed below:

Gila and Salt River Meridian, Arizona

Phoenix 075415

T. 6 S., R. 6 W.,

Sec. 16, SE¼.

Phoenix 077262

T. 6 N., R. 2 W.,
Sec. 36.
T. 5 S., R. 4 W.,
Sec. 2, lots 5 to 36, inclusive, S½N½, and S½;
Sec. 16, N½, NW¼SW¼, S½SW¼, and SE¼.

Phoenix 077263

T. 6 S., R. 6 W.,
Sec. 16, N½ and SW¼.

Phoenix 077266

T. 2 S., R. 4 W.,
Sec. 32, SE¼SE¼.

Phoenix 077267

T. 3 S., R. 4 W.,
Sec. 2, S½N½ and S½.

Phoenix 077844

T. 3 S., R. 4 W.,
Sec. 2, lots 1 to 4, inclusive.

Phoenix 079832

T. 3 S., R. 4 W.,
Sec. 11, lots 76, 77, 78, and lots 81 to 86, inclusive;
Sec. 14, N½N½NW¼NW¼.

Phoenix 080823

T. 4 S., R. 4 W.,
Sec. 2, SW¼NW¼ and W½SW¼.

AR 017176

T. 2 S., R. 4 W.,
Sec. 25, E½SW¼ and E½W½SW¼.

AR 032509

T. 5 S., R. 4 W.,
Sec. 28, lot 2;
Sec. 33, N½NE¼.

A 3910

T. 1 S., R. 4 W.,
Sec. 13, that portion of the N½NW¼ north of the Arlington Canal;
Sec. 14, NW¼NE¼, NE¼NW¼, and those portions of the NE¼NE¼, SW¼NE¼, and SE¼NW¼ north of the Arlington Canal.

The areas described aggregate approximately 3223.77 acres in Maricopa County, Arizona.

2. The United States did not acquire the mineral rights in sec. 36, T. 6 N., R. 2 W., SE¼SE¼ sec. 32, T. 2 S., R. 4 W., lots 1 to 4, inclusive, S½N½ and S½, sec. 2, lots 76, 77, 78, and lots 81 to 86, inclusive, sec. 11, and N½N½ NW¼NW¼ sec. 14, T. 3 S., R. 4 W.; SW¼NW¼ and W½SW¼ sec. 2, T. 4 S., R. 4 W.; lots 5 to 36, inclusive, S½N½ and S½ sec. 2, N½, NW¼SW¼, S½SW¼, and SE¼ sec. 16, T. 5 S., R. 4 W., and sec. 16, T. 6 S., R. 6 W.

3. Subject to valid existing rights and the provisions of applicable law, effective upon this publication, the lands described in paragraph 1 are open to application for State selection under Section 2275 and 2276, Revised Statutes, as amended, 43 U.S.C. 851 and 852. All valid applications received at or prior to 10:30 a.m., November 18, 1980, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Phoenix, Arizona 85073 (602–261–3706).

Dated: November 7, 1980.

Mario L. Lopez,

Chief, Branch of Lands and Minerals Operations.

[FR Doc 80-36085 Filed 11-17-80 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Availability of Record of Decision on Final Environmental Impact Statement (FES 80–22) for General Management Plan, Chickasaw National Recreation Area, Oklahoma

Pursuant to Regulations of the Council on Environmental Quality (40 CFR Part 1505.2) and the Implementing Procedures of the National Park Service for the National Environmental Policy Act of 1969, the Department of the Interior has prepared a Record of Decision on the Final Environmental Impact Statement (FES 80–22) for the General Management Plan, Chickasaw National Recreation Area, Oklahoma.

Record of Decision is a concise statement of what decisions were made, what alternatives were considered, and what mitigative measures were developed in order to avoid or minimize environmental harm.

Decision

The National Park Service will accept, as approved for eventual implementation, the General Management Plan for Chickasaw National Recreation Area, in Oklahoma, as described in the *General Management Plan* of July 1979.

Project Description

The National Park Service will undertake coordinated facility development, visitor use programs, and resources management actions for Chickasaw National Recreation Area through a general management plan. This recreation area was established in 1976 by joining the former Platt National Park with the former Arbuckle Recreation Area by means of a connecting corridor of land. New facilities are proposed to realize the recreational opportunities offered by the larger area; these include a visitor center/headquarters adjacent to the City of Sulphur, a 9.5 mile biking/hiking trail, a 6.5 mile hiking trail, a net of 32 additional campsites (adding 59 and deleting 27), three comfort stations, a campground sewage collection system, and 11 small structures for park protection and maintenance. A shallow overflow channel will be constructed to provide a floodwater bypass around Travertine Nature Center. An artesian well will be capped so that its flow may be regulated, decreasing the volume if feasible. Research will be undertaken concerning vegetative mosaics, water management, wildlife studies, flood conditions, and visitor use/resource preservation relationships. Carrying capacities are provisionally established for camping use (468 individual and 20 group sites) and for boat use (600 at one time), within the general level of 2 million visitors, to be monitored and adjusted by management as visitor preferences and resources factors are measured.

Description of Alternatives

Five alternatives, in addition to the proposed general management plan, were considered by the National Park Service in reaching its decision:

1. No Federal action
2. Increase facility development to terrain capacity
3. Develop bicycle trail from Travertine District to the Point
4. Relocate U.S. Highway 177 and redesign circulation in Travertine District
5. No Visitor Center

Alternatives 1 and 2 relate to capacity levels overall in the park. Alternatives 3 through 5 deal with options for specific development project, and have the general management plan as their basis for all but the development projects mentioned.

Basis for Decision

The alternatives and the general management plan were examined for:

1. meeting the maximum number of park-approved management objectives. These objectives are stated and conditions for the use and management of the individual park,
2. meeting letter and intent of Pub. L. 94–235, the establishing legislation for Chickasaw National Recreation Area, including the dollar amount authorized for development,
3. degree of environmental consequences, both short and long-term, and the cumulative effects of such consequences.

Evaluation of the general management plan (GMP) and the five alternatives in

relation to the three factors mentioned above follows:

Factor 1: *Meeting Management Objectives*

Thirty-two management objectives, based on the needs of the park and the policies of the National Park Service, are in effect for Chickasaw National Recreation Area. These objectives are grouped into the following seven categories:

a. Management, Administration, and Support;
b. Interpretation and Visitor Services;
c. Visitor Protection and Safety;
d. Natural Resources Management;
e. Cultural Resources Management;
f. Planning and Construction; and
g. Land Acquisition.

GMP—30 of 32 met.
Alternative 1—17 of 32 met.
Alternative 2—22 of 32 met.
Alternative 3—30 of 32 met.
Alternative 4—30 of 32 met.
Alternative 5—28 of 32 met.

Factor 2: *Meeting Letter and Intent of Pub. L. 94–235*

All the alternatives and the GMP meet the letter and intent of Sections 1 through 6 of Pub. L. 94–235. The GMP and the alternatives range in dollar amounts and therefore differ in whether they meet, fall below or exceed the dollar amount for development authorized in Section 7 of Pub. L. 94–235.

GMP—meets.
Alternative 1—falls below.
Alternative 2—exceeds.
Alternative 3—exceeds.
Alternative 4—exceeds.
Alternative 5—falls below.

Factor 3: *Degree of Environmental Consequences*

Impacts, both beneficial and adverse, were considered in the following seven categories:

a. Hydrology,
b. Biological Resources,
c. Soils and Topography,
d. Air Quality,
e. Cultural Resources,
f. Regional Socioeconomy, and
g. Visitor Use.

Short-term consequences are generally related to construction activities, whereas long-term and cumulative effects vary with not only the extent of initial construction, but also with resource management actions and visitor capacities.

Based on impacts, the general management plan is the most environmentally preferable.

Mitigation

The National Park Service considers that all practicable means to avoid or minimize environmental harm from implementing the described project have been described and will be adopted.

The Record of Decision is available from and for inspection at the following locations: Chickasaw National Recreation Area, Post Office Box 201, Sulphur, Oklahoma 73086; and Southwest Regional Office, National Park Service, 1100 Old Santa Fe Trail, Post Office Box 728, Santa Fe, New Mexico 87501.

Comments on the Record of Decision should be sent to the Superintendent, Chickasaw National Recreation Area, Post Office Box 201, Sulphur, Oklahoma 73086. The record will remain open until thirty (30) days following publication of this notice, during which time written comments will be received and considered. Following review of all public comments received, the general management plan will be implemented.

Dated: November 4, 1980.

Robert I. Kerr,

Regional Director, Southwest Region National Park Service.

[FR Doc. 80-35995 Filed 11-17-80; 8:45 am]

BILLING CODE 4310-70-M

Intention To Negotiate Concession Contract

Pursuant to the provisions of Section 5 of the Act of October 9, 1965 [79 Stat. 969; 16 U.S.C. 20) public notice is hereby given that on or before December 18, 1980, the Department of the Interior, through the Director of the National Park Service, proposes to negotiate a concession contract with H.S. Concessions, Inc., authorizing it to continue to provide semi-mobile food and sundry sales facilities and services for the public at the Sandy Hook Unit of Gateway National Recreation Area for a period of five (5) years from January 1, 1981, through December 31, 1985.

An assessment of the environmental impact of this proposed action has been made and it has been determined that it will not significantly affect the quality of the environment, and that it is not a major Federal action having a significant impact on the environment under the National Environmental Policy Act of 1969. The environmental assessment may be reviewed in the North Atlantic Regional Office, National Park Service, 15 State Street, Boston, MA 02109.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expires by limitation of time on December 31, 1980, and therefore, pursuant to the Act of October 9, 1965, as cited above, is entitled to be given preferenced in the renewal of the permit and in the negotiation of a new contract. This provision, in effect, grants H.S. Concessions, Inc., as the present satisfactory concessioner, the right to meet the terms of responsive proposals for the proposed new contract and a preference in the award of the contract, if, thereafter, the proposal of H.S. Concessions, Inc., is substantially equal to others received. In the event a responsive proposal superior to that of H.S. Concessions, Inc. (as determined by the Secretary) is submitted, H.S. Concessions, Inc., will be given the opportunity to meet the terms and conditions of the superior proposal the Secretary considers desirable, and, if it does so, the new contract will be negotiated with H.S. Concessions, Inc. The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before December 18, 1980 to be considered and evaluated.

Interested parties should contact the Regional Director, North Atlantic Regional Office, National Park Service, 15 State Street, Boston, MA 02109 for information as to the requirements of the proposed contract.

Dated: October 30, 1980.

Richard L. Stanton,

Regional Director, North Atlantic Region.

[FR Doc. 80-35996 Filed 11-17-80; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided November 12, 1980.

In our recent decisions, a 13-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 13.3 percent. We are authorizing that the 13-percent surcharge for this traffic remain in effect, and that all owner-operators are to receive compensation at this level.

No change is authorized in the 2.3-percent surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner operators,

nor in the 1.3-percent surcharge for United Parcel Service. However, the surcharge authorized for the bus carriers is increased to 5.0 percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

It is ordered: This decision shall become effective Frjday 12:01 a.m. November 14, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam. Vice Chairman Gresham not participating. Commissioner Clapp absent and not participating.

Agatha L. Mergenovich,

Secretary.

Appendix—Fuel Surcharge

Base date and price per gallon (including tax)

January 1, 1979 ..... 63.5¢

Date of current price measurement and price per gallon (including tax)

November 10, 1980 ..... 113.5¢

	Transportation proformed by—			
	Owner operator [1]	Other [2]	Bus carriers	UPS
Average percent fuel expenses (including taxes) of total revenue	16.9	2.9	6.3	3.3
Percent surcharge developed	13.3	2.3	5.0	[3]2.1
Percent surcharge allowed	13.0	2.3	5.0	[4]1.3

[1] Apply to all truckload rated traffic.
[2] Including less-than-truckload traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 8 percent of the percentage increase in the current price per gallon over the base price per gallon to UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).
[4] The developed surcharge is reduced 0.8 percent to reflect fuel-related increases already included in UPS rates.

[FR Doc. 80-35880 Filed 11-17-80; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed within 45 days of publication of this decision-notice (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-089

Decided: November 5, 1980

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 14681 (Sub-6F), filed October 27, 1980. Applicant: A. M. DELIVERY, INC., 21454 Cold Springs Lane, Diamond Bar, CA 91765. Representative: Milton W. Flack, 8383 Wilshire Blvd., Suite 900, Beverly Hills, CA 90211. Transporting *general commodities* (except used household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 147102 (Sub-5F), filed October 24, 1980. Applicant: E. T. I. COMPANY, 4055 William Penn Highway, Easton, PA 18042. Representative: Rick A. Rude, Suite 611, 1730 Rhode Island Ave. NW., Washington, DC 20036. Transporting *shipments weighing 100 pounds or less,* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

Volume No. OP3-069

Decided: November 6, 1980

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Carleton not participating.

MC 142565 (Sub-5F), filed October 20, 1980. Applicant: DON RAY DRIVE-A-WAY COMPANY, INC., 305 North 13th St., Decatur, IN 46733. Representative: Constance J. Goodwin, Suite 800 Circle Tower, Five Fast Market St., Indianapolis, IN 46204. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S. (including AK, but excluding HI).

MC 152295 (Sub-1F), Filed October 21, 1980. Applicant: JEFFREY RECOB AND WILLIAM RECOB d.b.a. RECOB BROTHERS TRUCKING, 10376 County Hwy Y, Mazomanie, WI 53560. Representative: Foster L. Kent, P.O. Box 285, Council Bluffs, IA 51502. Transporting *food and other edible products* (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, *agricultural limestone, and other soil conditioners, and agricultural fertilizers,* if such transportation is provided with the owner of the motor vehicle in such vehicle, except in emergency situations, between points in the U.S.

Volume No. OP4-121

Decided: November 6, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC-17506 (Sub-2F), Filed October 29, 1980. Applicant: WESTMINSTER HOLDING CORP., 34 Dike St., Providence, RI 02909. Representative: Morris J. Levin, 1050 17th St., NW., Suite 701, Washington, DC 20036. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 114416 (Sub-15F), Filed October 27, 1980. Applicant: WESTERN TRANSPORT CRANE & RIGGING, 100 Western Way, Missoula, MT 59801. Representative: Henry C. Winters, 525 Evergreen Bldg., Renton, WA 98055. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 119567 (Sub-18F), Filed October 29, 1980. Applicant: EMPIRE TRANSPORT, INC., 2007 Overland Rd., Boise, ID 83707. Representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 120737 (Sub-72F), Filed October 27, 1980. Applicant: STAR DELIVERY & TRANSFER, INC., P.O. Box 39, Canton, IL 61520. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602. Transporting *general commodities* (except used household goods, hazardous or secret materials and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 131067 (Sub-1F), Filed October 15, 1980. Applicant: FRANK DUDLEY, 110 W. 4th St., P.O. Box 848, Eloy, AZ 85231. Representative: Milton W. Flack, 8383 Wilshire Blvd, Suite 900, Beverly Hillls, CA 90211. As a broker to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-35789 Filed 11-17-80; 8:45 am]

BILLING CODE 7035-01-M

Long- and Short-Haul Applications for Relief (Formerly Fourth Section Applications)

November 13, 1980.

These applications for long- and short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. on or before December 3, 1980.

No. 43868, Trans-Continental Freight Bureau, Agent (No. 554), new reduced rates on Motor Vehicles, freight or passenger, from Flint, Lansing, and Pontiac, MI to Pacific Northwest destinations assigned rate basis 1, 2, 3, 5, and 6 in the States of Oregon and Washington. Rates to be published in Items 1845.20, 1845.30, and 1845.40 series of Tariff ICC TCFB 3001-B. Grounds for relief—Motor, Motor-Rail Competition.

No. 43869, Trans-Continental Freight Bureau, Agent (No. 555) new reduced rates on Lumber and Related Articles, from Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah and Washington, to Stations in North Carolina and Virginia on the NW, NF&D, WSS and HPT&D. Rates to be published in Item 520-QQ of Tariff ICC TCFB 4517 and Item 515-RR of Tariff ICC TCFB 4519. Grounds for relief—Rate Relationship.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-35681 Filed 11-17-80; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. 340]

Motor Carrier Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 80-29631, appearing at page 63564 in the issue of Thursday, September 25, 1980, the twelfth line in the fifth paragraph (beginning "MC 70267 (Sub-16F)) in column one on page 63566 should read, "CT, MA, ME, NH, RI, and VT, (b) *materials*"

BILLING CODE 1505-01-M

Permanent Authority Decisions; Decision-Notice

Correction

In FR Doc. 80-23334, appearing at page 51933 in the issue of Tuesday, August 5, 1980, the fourteenth line of the third full paragraph (beginning MC-119689 (Sub-30F)) in column two on page 51950 should read, "Morris and Streamwood, IL, on the one"

BILLING CODE 1505-01-M

[Volume No. OP2-088]

Motor Carrier Permanent Authority Decisions; Decision-Notice

Decided: November 5, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 C.F.R. 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 F.R. 45539.

Persons wishing to oppose an application must follow the rules under 49 C.F.R. 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendement to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before January 2, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebutal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 3, Members Hill, Fortier, and Parker.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Volume No. OP2-068

Decided: No. 5, 1980.

By the Commission, Review Board Number 3, members Parker, Fortier, and Hill.

MC 16513 (Sub-19F) (correction), filed September 18, 1980, published in the Federal Register, issue of October 2, 1980, and republished, as corrected, this issue. Applicant: RESOH TRUCKING & TRANSPORTATION CO., INC., 1301 Union Ave., Pennsauken, NY 08110. Representative: Jeffrey A. Vogelman, Suite 400, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Transporting *copper articles*, between points in New London County, CT, on the one hand, and, on the other, points in NY.

Note.—The purpose of this republication is to correct the territory description.

MC 41432 (Sub-169F), filed October 14, 1980. Applicant: EAST TEXAS MOTOR FREIGHT LINES, INC., 2355 Stemmons Freeway (P.O. Box 1025), Dallas, TX 75207. Representative: Wayland Little (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving Santo, TX, and the facilities of Heart of America, Inc., at or near Santo, TX, as an off-route point in connection with carrier's otherwise authorized regular route operations between Fort Worth and El Paso, TX.

Note.—Applicant intends to tack with existing authority and to interline.

MC 69633 (Sub-160F), filed October 27, 1980. Applicant: ASSOCIATED TRUCK LINES, INC., 200 Monroe Ave. NW.-6th Floor, Grand Rapids, MI 49503. Representative: Harry Poblad (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in St. Charles County, MO, on the one hand, and, on the other, points in the U.S.

MC 71598 (Sub-77F), filed October 23, 1980. Applicant: FORWARDERS TRANSPORT, INC., 1008 E. Second St., Scotch Plains, NJ 07076. Representative: David W. Swenson (same address as applicant). Transporting *general commodities* (except Classes A and B explosives and household goods as defined by the Commission), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Ciba-Geigy Corporation.

MC 77013 (Sub-9F), filed October 23, 1980. Applicant: NIEDERBRACH TRUCK SERVICE, INC., P.O. Box 67, Steeleville, IL 62288. Representative: Floyd W. Hertel (same address as applicant.) Transporting, *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between St. Louis, MO and Carbondale, IL, from St. Louis to beginning IL Hwy 13, then over IL Hwy 13 to Carbondale and return over the same route, serving all intermediate points and the off-route points of DuQuoin, Desoto, Anna, and Jonesboro, IL, and those in Jackson County, IL.

MC 107012 (Sub-595F), filed October 21, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Bruce W. Boyarko (same address as applicant). Transporting (1) *refrigerator and freezer doors, and cooling and freezing box parts*, and (2) *parts and accessories* for the commodities, in (1) from San Fernando, CA, to points in TX.

MC 107012 (Sub-596F), filed October 24, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting (1) *furniture*, from Pulaski, VA, to points in IA, and (2) *parts and accessories* for furniture, from points in IA, KS, MO, and OK, to Pulaski, VA.

MC 107012 (Sub-600F), filed October 24, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *vinyl sheet material*, from Dalton, GA, to St. Louis, MO.

MC 108223 (Sub-37F), filed October 22, 1980. Applicant: CENTURY-MERCURY MOTOR FREIGHT, INC., P.O. Box 43050, St. Paul, MN 55164. Representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), (1) between points in IA, IL, MN, ND, and WI, on the one hand, and, on the other, points in the U.S., and (2) between points in IA, IL, MN, ND, and WI.

MC 119493 (Sub-400F), filed October 21, 1980. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those injurious or contaminating to other lading), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities used by Hammermill Paper Company.

MC 125433 (Sub-442F), filed October 20, 1980. Applicant: F-B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting (1) *furniture or fixtures*, (2) *rubber or miscellaneous plastic products*, and (3) *fabricated metal products;* except ordnance, as described in Items 25, 30, and 34, respectively, of the Standard Transportation Commodity Code Tariff, between points in TX, on the one hand, and, on the other, points in the U.S.

MC 128302 (Sub-17F), filed October 22, 1980. Applicant: THE MANFREDI MOTOR TRANSIT CO., 14841 Sperry Rd., Newbury, OH 44065. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215. Transporting *bulk commodities*, in tank vehicles, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of SCM Corporation, of Cleveland, OH.

MC 139923 (Sub-81F), filed October 21, 1980. Applicant: MILLER TRUCKING CO., INC., P.O. Drawer "D", Stroud, OK 74079. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of nonalcoholic beverages (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Shasta Beverages, Inc.

MC 140033 (Sub-91F), filed October 27, 1980. Applicant: COX REFRIGERATED EXPRESS, 10606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between

points in the U.S., restricted to traffic originating at or destined to the facilities of the Pillsbury Company and its affiliates and subsidiaries.

MC 144122 (Sub-78F), filed October 21, 1980. Applicant: CARRETTA TRUCKING, INC., S 160 Route 17, Paramus, NJ 07652. Representative: Joseph Carretta (same address as applicant). Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from points in MA, CT, NJ, and PA, to points in Harris County, TX.

MC 144603 (Sub-77F), filed October 20, 1980. Applicant: F.M.S. TRANSPORTATION, INC., 2564 Harley Dr., Maryland Heights, MO 63043. Representative: Laura C. Berry (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between St. Louis, MO, points in St. Louis, St. Charles, Franklin, Jefferson and Warren counties, MO, and Madison, St. Clair, Monroe and Clinton Counties, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI). Condition: The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343(a) or submit an affadavit indicating why such approval is unnecessary.

MC–146402 (Sub-26F), filed October 28, 1980. Applicant: CONALCO CONTRACT CARRIER, INC., P.O. Box 968, Jackson, TN 38301. Representative: Charles W. Teske (same address as applicant). Transporting (1) *rubber or miscellaneous plastic products, clay, concrete, glass, or stone products, and fabricated metal products* (except ordnance), as described in Items 30, 32, and 34 of the Standard Transportation Commodity Code Tariff, and (2) *equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) between points in Ashland and Holmes Counties, OH, on the one hand, and, on the other, points in the U.S.

MC–148143 (Sub-2F), filed October 27, 1980. Applicant: MID-AMERICA FARM LINES, INC., MPO Box 71, Springfield, MO 65801. Representative: Wm. L. Peterson, Jr., 1109 Colcord Building, 15 North Robinson, Oklahoma City, OK 73102. Transportation (1) *Food products,* as described in Item 01 of the Standard Transportation Commodity Code Tariff, (2) *Food or Kindred Products,* as described in Item 20 of the Standard Transportation Commodity Code Tariff, (3) *Lumber or wood products, except furniture,* as described in Item 24 of the Standard Transportation Commodity Code Tariff, (4) *Pulp, Paper, or Allied Products,* as described in Item 26 of the Standard Transportation Commodity Code Tariff, (5) *Printed Matter,* as described in Item 27 of the Standard Transportation Commodity Code Tariff, (6) *Chemicals or Allied Products,* as described in Item 28 of the Standard Transportation Commodity Code Tariff, (7) *Clay, Concrete, Glass or Stone Products,* as described in Item 32 of the Standard Transportation Commodity Code Tariff, (8) *Fabricated Metal Products,* except Ordinance, as described in Item 34 of the Standard Transportation Commodity Code Tariff, (9) *Machinery, except electric,* as described in Item 35 of the Standard Transportation Commodity Code Tariff, (10) *Waste or scrap Materials, not identified by Industry Producing,* as described in Item 40 of the Standard Transportation Commodity Code Tariff, (11) *containers, shipping, returned empty, aao carriers or devices,* as described in Item 42 of the Standard Transportation Commodity Code Tariff, between points in the U.S., under continuing contract(s) with R. T. French Company, of Rochester, NY.

MC–148203 (Sub-2F), filed October 20, 1980. Applicant: COPPER CITY TRANSPORT, INC., R.D. No. 2, Route 5S, Frankfort, NY 13340. Representative: Murray J. S. Kirshtein, 118 Bleecker St., Utica, NY 13501. Transporting (1) *aluminum, copper wire, and cable and copper rod* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) between points in the U.S., under continuing contract(s) with Rome Cable Corporation, of Rome, NY.

MC–149583 (Sub-5F), filed October 21, 1980. Applicant: REISCH TRUCKING & TRANSPORTATION CO., INC., 1301 Union Ave., Pennsauken, NJ 08110. Representative: L. C. Major, Jr., Suite 400, Overlook Bldg., 6121 Lincolnia Rd., Alexandria, VA 22312. Transporting *such commodities* as are dealt in by chain grocery stores and food business houses, maintenance supplies for institutional and industrial uses and materials and supplies used in the manufacture and distribution of the aforenamed commodities, (except commodities in bulk), between points in the U.S., under continuing contract(s) with The Procter & Gamble Company, of Cincinnati, OH, and its subsidaries.

MC 150432 (Sub-7F), filed October 21, 1980. Applicant: H&M TRANSPORTATION, INC., U.S. 42 & 70, London, OH 43140. Representative: Owen B. Katzman, 1828 L St. NW., Suite 1111, Washington, DC 20036. Transporting *frozen foods,* between points in the U.S., under continuing contract(s) with Interestate Cold Storage, Inc., of Columbus, OH.

MC 150542 (Sub-1F), filed October 20, 1980. Applicant: RIDGEFIELD PARK TRANSPORT CO., Inc., 106 Teaneck Rd., Ridgfield Park, NJ 07660. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Authority to operate as a motor common carrier in the transportation of *printed matter and material, equipment and supplies* used in the manufacture and distribution of printed matter, between points in NY, NJ, PA, DE, RI, CT, MA, NH, VT and ME. Condition: The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. 11343 (a) or submit an affidavit indicating why such approval is unnecessary.

MC 150742 (Sub-1F), filed October 20, 1980. Applicant: DOME TRANSPORT COMPANY, INC., 114 Park Ave., Manhasset, NY 11030. Representative: R. G. Buskard (same address as applicant). Transporting (1) *plastic bags, film and sheeting,* and (2) *supplies* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk, and those requiring special equipment), between points in the U.S., under continuing contract(s) with American Cellophane & Plastic Films, Div. LG, Inc., of Boston, MA.

MC 150962 (Sub-1F), filed October 24, 1980. Applicant: ALBERT GILMORE, 273 Laurel Drive, Mobile, AL 36617. Representative: J. Michael Newton, 2970 Cottage Hill Rd., Suite 148, Mobile, AL 36606. Transporting *passengers,* between points in Mobile County, AL, on the one hand, and, on the other, Pascagoula, MS.

MC 152192 (Sub-1F), filed October 14, 1980. Applicant: Edward R. Temmen, Star Route 2, Jefferson City, MO 65101. Representative: James C. Swearengen, P.O. Box 456, Jefferson City, MO 65102. Transporting: (A) *fertilizer,* from the facilities of Cooperative Farm Chemical Association, at or near Lawrence, KS, to points in MO; and (B) *animal and poultry feed, and feed ingredients,* from points in KS and IA, to points in MO.

MC 152363F, filed October 23, 1980. Applicant: PERDUE TRANSPORTATION INCORPORATED, Zion Church Rd., Salisbury, MD 21801. Representative: Michael F. Morrone, 1150 17th St. NW., Washington, DC 20036. Transporting (1) *inedible vegetable oils,* in bulk, and (2) *edible oils* between points in the U.S., under

continuing contract(s) with Colfax, Inc., of Pawtucket, RI.

MC 152423F, filed October 16, 1980. Applicant: DRYDEN-NICHOLSON INDUSTRIES, INC., P.O. Box 45157, Los Angeles, CA 90045. Representative: Fred H. Mackensen, 9454 Wilshire Blvd., Suite 400, Beverly Hills, CA 90212. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives) between points in Mohave County, AZ, on the one hand, and, on the other, those points in CA in and south of San Luis Obispo, Kern and San Benardino Counties.

Volume No. OP2-091

Decided: November 6, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 4483 (Sub-28F), filed October 20, 1980. Applicant: MONSON TRUCKING, INC., R.R. #1, Red Wing, MN 55066. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55066. Transporting *food or kindred products,* as described in Item 20 of the Standard Transportation Commodity Code Tariff, between points in St. Louis County, MN, on the one hand, and, on the other, points in Eau Claire and Jefferson Counties, WI.

MC 8603 (Sub-1F), filed October 27, 1980. Applicant: JERRY SIMPSON, d.b.a. THORNTON TRANSFER, Box 366, Griswold, IA 51535. Representative: Homer Bradshaw, 1100 Des Moines Building, Des Moines, IA 50307. Transporting *general commodities* between points in IA, NE, and MO, restricted to traffic having a prior or subsequent movement by rail. Condition: To the extent any Certificate issued in this proceeding authorizes the transportation of classes A and B explosives, it shall be limited to a period expiring 5 years from its date of issue.

MC 57992 (Sub-11F), filed October 28, 1980. Applicant: SEWELL MOTOR EXPRESS, INC., 149 South Mulberry St., Wilmington, OH 45177. Representative: Joe F. Asher, 88 East Broad St., Columbus, OH 43215. Transporting *general commodities* (except those of unusual value and classes A and B explosives), between points in Greene County, OH, on the one hand, and, on the other, points in the U.S.

MC 70502 (Sub-3F), filed October 29, 1980. Applicant: WARNER STORAGE, INC., 3208 Broadview, Cleveland, OH 44109. Representative: Richard D. Mathias, 1100 Connecticut Ave. NW., Washington, DC 20036. Transporting *household goods* as defined by the Commission, (1) between points in OH, PA, MD, IN, NY, VA, IL, VT, MO, NH, WV, IA, ME, NC, MN, MA, SC, WI, CT, GA, MI, NJ, RI, IN, DE, KY, and DC.

MC 75302 (Sub-17F), filed October 24, 1980. Applicant: DOUDELL TRUCKING COMPANY, a corporation, 555 East Capitol Ave., Milpitas, CA 95305. Representative: Ronald C. Chauvel, 100 Pine St., Suite 2550, San Francisco, CA 94111. Transporting (1) *animal and poultry feed,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Doane Products Company, of Joplin, MO.

MC 80262 (Sub-5F), filed October 27, 1980. Applicant: SOUTH ATLANTIC BONDED WAREHOUSE CORPORATION, 2020 E. Market St., Greensboro, NC 27402. Representative: Terrell C. Clark, P.O. Box 25, Stanleytown, VA 24168. Transporting *appliances, carpet, carpet cushioning, heating units, air conditioning units, and kitchen cabinets,* between points in Fayette, Greenbriar, Logan, McDowell, Mercer, Monroe, Raleigh, Summers, and Wyoming Counties, WV, Carter, Hancock, Hawkins, Johnson, Sullivan, Unicoi, and Washington Counties, TN, Floyd, Harlan Johnson, Knott, Leslie, Letcher, Martin, Perry, and Pike Counties, KY, and points in NC and VA.

MC 98832 (Sub-3F), filed October 28, 1980. Applicant: THE HARBOR TRANSPORTATION CO., INC., 30 Waterfront St., New Haven, CT 06511. Representative: Sidney L. Goldstein, 109 Church St., New Haven, CT 06510. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk, in tank vehicles), between points in New Haven County, CT, on the one hand, and, on the other, points in MA, RI, and points in Duchess, Putman, Westchester, and Albany Counties, NY.

MC 107012 (Sub-596F), filed October 27, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same as applicant). Transporting: *Parts, materials and supplies* used in the manufacture maintenance, and distribution of air conditioners, humidifiers and dehumidifiers, from points in the U.S. (except AK and HI) to Edison, NJ.

MC 107012 (Sub-579F), filed October 24, 1980. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop (same address as applicant). Transporting *plastic bottles,* from Tacoma, WA, to Denver, CO and Salt Lake City, UT.

MC 111812 (Sub-741F), filed October 26, 1980. Applicant: MIDWEST COAST TRANSPORT, INC.; P.O. Box 1233, Sioux Falls, SD 57117. Representative: R. H. Jinks (same address as applicant). Transporting *such commodities* as are dealt in and distributed by automotive supply houses, between points in GA, IL, IA, KS, MI, MN, MO, MT, NE, ND, OK, SD, and TX.

MC 113362 (Sub-405F), filed October 27, 1980. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. Transporting (1) *food of kindered products,* as described in Item 20 of the Standard Transportation Commodity Code Tariff, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between those points in the U.S., in and east of ND, SD, NE, CO, and NM.

MC 117692 (Sub-6F), filed October 21, 1980. Applicant: MAURICE TRANSPORT CO., a corporation, P.O. Box 365, Morton, IL 61550. Representative: Douglas G. Brown, The INB Center, Suite 555, One North Old State Capitol Plaza, Springfield, IL 62701. Transporting *petroleum and petroleum products,* between points in Tazewell County, IL, on the one hand, and, on the other, points in IN, IA, and WI.

MC 118803 (Sub-23F), filed October 27, 1980. Applicant: ATLANTIC TRUCK LINES, INC., 168 Town Line Road, Kings Park, NY 11754. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *such commodities* as are dealt in or use by manufacturers or distributors of plastic articles (except in bulk) between points in the U.S. under a continuing contract(s) with Mobil Chemical Company, Plastics Division of Macedon, NY.

MC 120212 (Sub-2F), filed October 28, 1980. Applicant: J.J. SULLIVAN AND SONS, INC., 25 Industrial Park Rd., Hingham, MA 02043. Representative: John F. O'Donnell, 60 Adams St., P.O. Box 238, Milton, MA 02187. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in CT, MA, ME, NH, NJ, NY, RI, and VT. Condition: The issuance of a certificate in this proceeding is conditioned upon coincidental cancellation of certificate of registration, No. MC 120212 Sub-1F

MC 125433 (Sub-443F), filed October 20, 1980. Applicant: F–B TRUCK LINE COMPANY, a corporation, 1945 South Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). Transporting *rubber or miscellaneous plastic products,* as described in Item 30 of the Standard Transportation Commodity Code Tariff, between points in the U.S. (including HI, but excluding AK).

MC 125872 (Sub-16F), filed October 28, 1980. Applicant: C.H. DREDGE & CO., INC., 918 South 2000 West, Syracuse, UT 84041. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting (1) *foodstuffs and materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, and (2) *agricultural chemicals,* in bulk, between points in the U.S., under continuing contract(s) with J.R. Simplot Company, of Boise, ID.

MC 140033 (Sub-89F), filed October 27, 1980. Applicant: COX REFRIGERATED EXPRESS, P.O. Box 20235, Dallas, TX 75220. Representative: D. Paul Stafford, Suite 1125, Exchange Pk., P.O. Box 45538, Dallas, TX 75245. Transporting *chemicals and plastic pellets,* in containers, (1) between points in Orange County, TX, on the one hand, and, on the other, points in CA, MI, MN, MA, GA, TN, and LA, (2) between Baton Rouge, LA, on the one hand, and, on the other, points in Orange County, TX, GA and TN, and (3) between Clinton, IA, on the one hand, and, on the other, points in Orange County, TX.

MC 140033 (Sub-90F), filed October 27, 1980. Applicant: COX REFRIGERATED EXPRESS INC., 1606 Goodnight Lane, Dallas, TX 75220. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Transporting *iron and steel pipe fittings* (1) between New York, NY, on the one hand, and, on the other, points in the U.S. and, (2) between points in Harris County, TX, on the one hand, and, on the other, points in CA and NY.

MC 141532 (Sub-103F), filed October 27, 1980. Applicant: PACIFIC STATES TRANSPORT, INC., 10244 Arrow Highway, Rancho Cucamonga, CA 91730. Representative: Michael, J. Norton, 1905 South Redwood Rd., Salt Lake City, UT 84104. Transporting *primary metal products,* including galvanized, and *fabricated metal products,* except ordnance, as described in Items 33 and 34 of the Standard Transportation Commodity Code Tariff, between points in Santa Clara County, CA, on the one hand, and, on the other, points in the U.S.

MC 142603 (Sub-30F), filed October 22, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. Transporting (1) *plastic and plastic products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with W.B.C. Extrusion Products, Inc., of Lowell, MA.

MC 142672 (Sub-157F), filed October 20, 1980. Applicant: DAVID BENEUX PRODUCE & TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *meats, meat products and meat byproducts and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) from the facilities of Sam Kane Beef Processors, Inc., at or near Corpus Christi, TX, to Jackson, MS, and points in CA, CT, MA, and RI, and (2) between points in CO, on the one hand, and, on the other, points in AR, LA, MO, OK, and TX.

MC 143032 (Sub-32F), filed October 23, 1980. Applicant: THOMAS J. WALCZYNSKI, d.b.a. WALCO TRANSPORT, 3112 Truck Center Dr., Duluth, MN 55806. Representative: William J. Gambucci, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. Transporting (1) *iron and steel articles* and (2) *materials, equipment, and supplies* used in the manufacture of iron and steel articles, between points in Monroe County, MI, on the one hand, and, on the other, points in the U.S.

MC 146703 (Sub-17F), filed October 28, 1980. Applicant: ROBERTS & OAKE, INC., 4240 Blue Ridge Blvd., Kansas City, MO 64133. Representative: Terrence D. Jones, 2033 K St. NW., Washington, DC 20006. Transporting *iron and steel articles,* between points in Whiteside County, IL, on the one hand, and, on the other, points in the U.S.

MC 146753 (Sub-14F), filed October 27, 1980. Applicant: SAM YOUNG, INC., P.O. Box 337, Wolcott, IN 47995. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting *such commodities* as are dealt in or used by discount chain department stores (except commodities in bulk), between points in the U.S., restricted to traffic originating at or destined to the facilities of Venture Stores, Division of May Company.

MC 148442 (Sub-4F), filed October 27, 1980. Applicant: SOUTHEASTERN FOOD DISTRIBUTORS, INC., d.b.a. Southeastern Transport Company, 607 10th Ave. North, Nashville, TN 37202. Representative: Roland M. Lowell, 618 United American Bank Bldg., Nashville, TN 37219. Transporting *foodstuffs,* from the facilities of Borden Foods, Distributor of Borden, Inc. at or near Atlanta, GA and Memphis, TN, to points in AL, AR, GA, KY, MO, MS and TN.

MC 148773 (Sub-2F), filed October 27, 1980. Applicant: A.F.L. TRUCK LINES, INC., 3661 W. Blue Heron Blvd., Riviera Beach, FL 33404. Representative: Anthony E. Young, Suite 350, 29 South LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of pollution control devices, between points in the U.S., under continuing contract(s) with A.F.L. Industries, Inc., of Riviera, FL.

Volume No. OP2–092

Decided: Nov. 7, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 112713 (Sub-315F), filed October 27, 1980. Applicant: YELLOW FREIGHT SYSTEM, INC., 10990 Roe Avenue, Overland Park, KS 66207. Representative: Robert E. DeLand (same address as applicant). Over regular routes, transporting *general commodities* (except household goods as defined by the Commission, those of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment), between Pittsfield, MA and Burlington, VT, over U.S. Hwy 7, serving all intermediate points, and (2) between Parkersburg, WV, and Clarksburg, WV, over U.S. Hwy 50, serving all intermediate points.

MC 114632 (Sub-292F), filed October 23, 1980. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. Condition: Issuance of this certificate is subject to prior or coincidental cancellation at applicant's written request of all certificates issued in this docket number.

MC 142603 (Sub-31F), filed October 28, 1980. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, MA 01101. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. Transporting (1) *rubber products and articles, and latex,* and (2) *materials, equipment, and supplies* used in the

manufacture, sales, and distribution of the commodities, in (1) above, between points in the U.S., under continuing contract(s) with Omni Products Company of Garland, TX.

MC 144122 (Sub-77F), filed October 21, 1980. Applicant: CARRETTA TRUCKING, INC., S 160, Route 17, Paramus, NJ 07652. Representative: Joseph Carretta (same address as applicant). Transporting (1) *drugs, toilet preparations, distilled water, intravenous solutions, chemicals, and medical care supplies,* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), from the facilities of Abbott Laboratories, at (a) Rocky Mount, NC, and (b) Altavista, VA, to points in the U.S. (except AK and HI).

MC 144503 (Sub-32F), filed October 20, 1980. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box F, Forest Park, GA 30050. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. Transporting (1) *bakery goods* (except frozen), from the facilities of Benson's Old Home Kitchens, at Bogart, GA, to points in the U.S. (except AK and HI); and (2) *materials, equipment, and supplies* used in the manufacture and distribution of bakery goods, in the reverse direction.

MC 152172 (Sub-1F), filed October 23, 1980. Applicant: DENNIS KEAR, d.b.a. DENNIS KEAR TRUCKING, P.O. Box 112, York, NE 68467. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501. (1) *Such commodities as are dealt in or used by manufacturers and distributors of electrical equipment, agricultural equipment, agricultural supplies, and pipe,* between points in York County, NE, and Finney County, KS, on the one hand, and, on the other, points in the U.S. and (2) *alcohol,* between points in NE, on the one hand, and, on the other, points in Atchison County, MO.

Volume No. OP3-070

Decided: Nov. 6, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Carleton not participating.

MC 15975 (Sub-37F), filed October 28, 1980. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). Transporting *alcoholic liquors,* and *materials, equipment, and supplies* used in the production and distribution of alcoholic liquors (except commodities in bulk and those requiring the use of special equipment), (1) between the facilities used by Hiram Walker & Sons, Inc., in IL, on the one hand, and, on the other, those points in the U.S., in and west of WI, IL, IN, KY, TN, AR, and LA (except AK and HI), and (2) between the facilities used by Hiram Walker & Sons, Inc., and its affiliated companys, on the one hand, and, on the other, points in ME, NH, VT, MA, CT, NY, PA, DE, MD, VA, NC, and DC.

MC 44605 (Sub-56F), filed October 17, 1980. Applicant: MILNE TRUCK LINES, INC., 2500 West California Ave., Salt Lake City, UT 84104. Representative: Ann M. Pougiales, 100 Bush St., 21st Floor, San Francisco, CA 94104. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) Between Rock Spring, WV and Denver, CO: From Rock Springs over Interstate Hwy 80 to junction Interstate Hwy 25, then over Interstate Hwy 25 to Denver, and return over the same route, and (2) Between Laramie, WY and Denver, CO, over U.S. Hwy 287, in (1) and (2) above serving Laramie, WY for purposes of joinder only, and the intermediate or off-route points of Fort Collins, Loveland, Greeley, Longmont and Boulder, CO.

MC 47904 (Sub-7F), filed October 23, 1980. Applicant: INTERCITY TRANSPORTATION CO., a corporation, 600 Turnpike Street, So. Easton, MA 02375. Representative: Canio D. Verrastro (same address as applicant). Transporting *general commodities* (except classes A and B explosives, commodities in bulk, household goods as defined by the Commission, and those requiring special equipment), between points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, and VT.

MC 73165 (Sub-531F), filed October 21, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd St., Birmingham, AL 35222. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—Applicant relies on present operations rather than shipper support for the authority sought. Issuance of a certificate is subject to prior or coincidental cancellation of Certificate No. MC 73165 Subs 225, 235, 249, 266, 268, 325, 334, 335, 339, 364, 388, 402, 409, 420, E-14, E-77, and E-94.

MC 107295 (Sub-1000F), filed October 28, 1980. Applicant: PRE-FAB TRANSIT CO., a corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). Transporting (1) *poles, arms, brackets, bases, and accessories,* (2) *iron and steel articles* (except those in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) and (2) above, between points in Washington County, TX, on the one hand, and, on the other, points in the U.S., (except AK and HI).

MC 123744 (Sub-91F), filed October 21, 1980. Applicant: BUTLER TRUCKING CO., a corporation, P.O. Box 88, Woodland, PA 16881. Representative: Dwight L. Koerber, Jr., P.O. Box 1320, 110 N. Second St., Clearfield, PA 16830. Transporting *general commodities* (except those of unusual value, classes A and B explosives, and used household goods), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Kaiser Aluminum & Chemical Corporation, and its subsidiaries.

MC 124025 (Sub-18F), filed October 21, 1980. Applicant: GLASS TRUCKING COMPANY, a corporation 200 Chestnut St., P.O. Box 276, Newkirk, OK 74647. Representative: C. L. Phillips, Room 248 Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Transporting *flour and flour products,* between points in the U.S., under continuing contract(s) with Cereal Food Processors, Inc., of Wichita, KS.

MC 126305 (Sub-150F), filed October 21, 1980. Applicant: BOYD BROTHERS TRANSPORTATION COMPANY, INC., RFD 1, Box 18, Clayton, AL 36016. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting (1) *composition board, lumber, particleboard, and lumber products,* (2) *building materials* (except commodities in (1) above), and (3) *materials, equipment, and supplies* used in the manufacture, distribution and installation of the commodities in (1) and (2) above (except commodities in bulk), between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 134105 (Sub-81F), filed October 21, 1980. Applicant: CELERYVALE TRANSPORT, INC., 1706 Rossdille Ave., Chattanooga, TN 37408. Representative: Jach H. Blanshan, Suite 200, 205 W. Touhy Ave., Park Ridge, I? 60068. Transporting (1) *paper, paper products, plastics, plastic articles, and woodpulp,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between points in the U.S.

MC 136635 (Sub-41F), filed October 28, 1980. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Road, South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *general commodities,* (except classes A and B explosives), between Marion County, IN on the one hand, and, on the other, points in MI, WI, MO, and MD.

MC 139015 (Sub-3F), filed October 20, 1980. Applicant: YELLOW VAN MOVERS, INC., 245 South Rock Island, Wichita, KS 67202. Representative: T. M. Brown, P.O. Box 1540, Edmond; OK 73034. Transporting *used household goods,* between points in KS, CO, WY, NE, IA, MO, AR, OK, TX, and NM.

MC 141205 (Sub-50F), filed October 20, 1980. Applicant: HUSKY OIL TRANSPORTATION COMPANY, a Corporation, 600 South Cherry St., Denver, CO 80222. Representative: F. Robert Reeder, James M. Elegante, P.O. Box 11898. Transporting *crude oil, scrubber oil, and oil condensate,* from points in Renville County, ND, to the pipeline injection stations on (1) Portal Pipeline near Stanley, ND, (2) Wesco Pipeline near Sidney, MT, and (3) Kenco Pipeline near Reserve, MT, under continuing contract(s) with Husky Oil Company, of Denver, CO.

MC 141914 (Sub-92F), filed October 21, 1980. Applicant: FRANKS AND SON, INC., Rt. 1 Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same address as applicant). Transporting *wooden and plastic products,* between points in Oxford County, ME, on the one hand, and, on the other, points in AL, CO, CT, DE, ID, IN, IA, KY, LA, MA, MI, MS, MT, NE, NJ, NM, NY, ND, PA, RI, SC, VT, WV, WI, and WY.

MC 142864 (Sub-28F), filed October 28, 1980. Applicant: RAY E. BROWN TRUCKING, INC., P.O. Box 501, Massillon, OH 44646. Representative: Jerry B. Sellman, 50 W. Broad St., Columbus, OH 43215. Transporting *Such commodities* as are dealt in or used by chain grocery and food business houses, between points in CT, DE, IA, IL, IN, KY, MA, MD, ME, MI, MN, MO, MH, NJ, NY, OH, PA, RI, TN, VA, WI, and WV.

MC 144184 (Sub-5F), filed October 28, 1980. Applicant: R. T. PUGH MOTOR TRANSPORTATION, INC., 223 Whiley Ave., Lancaster, OH 43130. Representative: James Duvall, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. Transporting *cullet,* between points in CT, DE, IN, IL, IA, KY, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, OH, PA, RI, TN, VT, VA, WV, WI, and DC.

MC 147404 (Sub-4F), filed October 20, 1980. Applicant: DONALD J. GETTELFINGER, d.b.a. GETTELFINGER FARMS, R.R. 2, Box 241, Palmyra, IN 47164. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204. Transporting *foodstuffs* (expect in bulk), between the facilities of Vlasic Foods, Inc., at (a) Bridgeport, Imlay City, and Memphis, MI; (b) Greenville, MS, (c) Millsboro, DE, and (d) City of Industry, CA, on the one hand, and, on the other, points in the U.S.

MC 147454 (Sub-2F), filed October 20, 1980. Applicant: JAMES CONDOSTA, 807 Exeter Ave., W. Pittston, PA 18643. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *anthracite coal,* from points in Luzerne and Schuylkill Counties, PA, to points in NY, CT, MA, NH, RI, VT, ME, OH, IN, IL, GA, MI, DE, and NJ.

MC 148745 (Sub-2F), filed October 28, 1980. Applicant: WAYNE MARVIN d.b.a. WAYNE MARVIN TRUCKING, P.O. Box 151, Grass Valley, OR 97029. Representative: Jim Pitzer, 15 South Grady Way, Suite 321, Renton, WA 98055. Transporting *meats, meat products, and meat byproducts, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), between points in the U.S., under a continuing contract(s) with Superior Packing Company, of Ellensburg, WA.

MC 149575 (Sub-7F), filed October 28, 1980. Applicant: ADAMS CARTAGE COMPANY, INC., P.O. Box 3043, Macon, GA 31205. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Transporting (1) *roofing and roofing products,* and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of roofing and roofing products, between points in Tuscaloosa County, AL, on the one hand, and, on the other, points in FL, GA, KY, NC, SC, TN, and VA.

MC 150954 (Sub-3F), filed October 28, 1980. Applicant: TRAVIS TRANSPORTATION, INC., 123 Coulter Ave., Ardmore, PA 19003. Representative: William E. Collier, 8918 Tesoro Drive, Suite 515, San Antonio, TX 78217. Transporting *styrofoam sheets,* from points in Columbia County, AR, to points in Bexar County, TX.

Volume No. OP3–072

Decided: November 5, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 73165 (Sub-527F), filed October 2, 1980, previously noticed in the Federal Register issue of October 21, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd St., Birmingham, AL 35222. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting (1) *commodities,* which because of size or weight require the use of special equipment, and (2) *self-propelled articles,* between points in Crittenden County, AR, and Shelby County, TN, on the one hand, and, on the other, points in the U.S.

Note.—This republication corrects the territorial description.

Volume No. OP4–122

Decided: November 6, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 47336 (Sub-13F), filed october 15, 1980. Applicant: ECLIPSE MOTOR LINES, INC., P.O. Box 507, Bridgeport, OH 43912. Representative: Joseph S. Zaccirey (same address as applicant). Transporting *iron and steel articles,* between Bridgeport, OH, and points in Kings County, NY.

MC 99896 (Sub-6F), filed October, 1980. Applicant: ATKINSON TRANSFER, INC., 1475 W. River Rd., Dayton, OH 45418. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in OH, on the one hand, and, on the other, points in the Lower Peninsula of MI.

MC 109397 (Sub-530F), filed October 29, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a Corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). In foreign commerce only, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. (except TX), on the one hand, and, on the other, ports of entry on the international boundary line between the U.S. and the Republic of Mexico.

MC 109397 (Sub-531F), filed October 29, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a Corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transporting (a) *ordnance or accessories,* (b) *lumber or wood products* (except furniture), (c) *pulp, paper, or allied products,* (d) *printed matter,* (e) *clay, concrete, glass or stone products,* (f) *primary metal products,*

including galvanized (except coating or other allied processing), (g) *fabricated metal products* (except ordnance, machinery or transportation equipment), (h) *machinery* (except electrical), (i) *transportation equipment*, (j) *instrument or photographic goods or optical goods, watches or clocks*, and (k) *waste or scrap materials* not identified by industry producing, as described in items (19), (24), (26), (27), (32), (33), (34), (35), (37), (38), and (40) of the Standard Transportation Commodity Code, respectively, between points in the U.S.

MC 115826 (Sub-597F), filed October 24, 1980. Applicant: W. J. DIGBY, INC., 6015 East 58th St., Commerce City, CO 80022. Representative: Charles J. Kimball, 350 Capital Life Center, 1600 Sherman St., Denver, CO 80203. Transporting *such commodities* as are dealt in or used by chain grocery and food business houses and food service companies, between points in the U.S. (except AK and HI).

MC 118696 (Sub-45F), filed October 21, 1980. Applicant: FERREE FURNITURE EXPRESS, INC., 252 Wildwood Rd., Hammond, IN 46324. Representative: John F. Wickes, Jr., 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (1) *urethane foam, urethane foam products, and carpet padding*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Chicago, IL, on the one hand, and, on the other, points in CO, and those in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 119117 (Sub-65F), filed September 22, 1980, previously noticed in the Federal Register issue of October 8, 1980, and republished this issue. Applicant: DUDLEY TRUCKING COMPANY, INC., 724 Memorial Dr., S.C., Atlanta, GA 30316. Representative: William F. Dudley (same address as applicant). Transporting *foodstuffs*, and *materials, equipment, and supplies* used in the manufacture and distribution of foodstuffs, between points in the U.S.

Note.—The purpose of this republication is to correctly state the territorial description.

MC 119777 (Sub-504F), filed October 23, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy 85—East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting *such commodities* as are used in, or in connection with, the construction, operation, repair, servicing, maintenance or dismantling of pipelines, (1) between points in MT, ND, SD, MN, and IA, and (2) between points in MT, ND, SD, MN, on the one hand, and on the other U.S. (except AK and HI).

MC 119777 (Sub-506F), filed October 29, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy 85—East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting (1) *building and construction materials*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between points in Niagara County, NY, Greene County, MO, and San Bernardino County, CA, on the one hand, and, on the other, points in the U.S.

MC 119936 (Sub-1F), filed October 21, 1980. Applicant: FAIRFIELD MOTOR TRANSPORTATION COMPANY, a Corporation, 4350 W. 123rd St., Alsip, IL 60658. Representative: Themis N. Anastos, 120 W. Madison St, Chicago, IL 60602. Transporting *iron and steel articles* (a) from Chicago, IL to Fort Wayne and Decatur, IN and (b) from St. Joe, IN to Chicago, IL.

MC 124306 (Sub-85F), filed October 24, 1980. Applicant: KENAN TRANSPORT COMPANY, INCORPORATED, P.O. Box 2729, Chapel Hill, NC 27514. Representative: Francis W. McInerny, Suite 502, 1000 16th St., NW., Washington, DC 20036. Transporting *chelating compounds and citric acid*, from Southport, NC to Spotswood, NJ.

MC 143607 (Sub-29F), filed October 29, 1980. Applicant: BAYWOOD TRANSPORT, INC., 2611 University Parks Dr., Waco, TX 76706. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 11th St., NW., Washington, DC 20001. Transporting *general commodities* (except classes A and B explosives and household goods as defined by the Commission), between points in the U.S. (except AK and HI), under continuing contract(s) with Hoover Universal, Inc., of Georgetown, KY.

Volume No. OP4–123

Decided: November 11, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman. Member Chandler not participating.

MC 21866 (Sub-184F), filed October 21, 1980. Applicant: WEST MOTOR FREIGHT, INC., 740 S. Reading Ave., Boyertown, PA 19512. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *scrap metals*, and *materials, equipment and supplies* used in the manufacture and distribution of scrap metals (except commodities in bulk), between Louisville, KY, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA (except KY).

MC 48386 (Sub-17F), filed October 21, 1980. Applicant: GRAVER TRUCKING, INC., R.D. 7, Box 7655, Stroudsburg, PA 18360. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *coal*, from points in Schuylkill County, PA, to New York, NY.

MC 100666 (Sub-536F), filed October 28, 1980. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Transporting (1) *printed matter*, and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, between, points in Milwaukee County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 113106 (Sub-99F), filed October 29, 1980. Applicant: THE BLUE DIAMOND COMPANY, a corporation, 4401 East Fairmont Ave., Baltimore, MD 21224. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., NW., Washington, DC 20005. Transporting (1) *iron and steel articles*, and (2) *materials and supplies* used in the manufacture of iron and steel articles, between the facilities of Bethlehem Steel Corporation at (a) Bethlehem and Johnstown, PA, (b) Sparrows Point, MD, and (c) Lackawanna, NY, on the one hand, and, on the other, points in DE, NC, NJ, NY, OH, PA, VA, WV, and MD.

MC 117676 (Sub-25F), filed October 21, 1980. Applicant: HERMS TRUCKING, INC., 620 Pear St., Trenton, NJ 08648. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *plastic, plastic products*, and *materials, equipment and supplies* used in the manufacture and distribution of plastic and plastic products (except commodities in bulk), between points in NJ, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 133526 (Sub-4F), filed October 27, 1980. Applicant: DICKSON'S TRANSPORT AND COACH LINES (NAPANEE) LIMITED, 293 Dundas St., West, Napanee, Ontario, Canada K7R 2B4. Representative: Herbert M. Canter, 305 Montgomery St., Syracuse, NY 13202. In foreign commerce only, transporting *extruded plastic door panels*, from the ports of entry on the international boundary line between the U.S. and Canada, in NY, MI, and MN, to points in Blackford County, IN, Hall County, NE, Cortland County, NY, and Mifflin County, PA.

MC 135306 (Sub-6F), filed October 28, 1980. Applicant: DAN'S TRANSIT, INC., 1254 Medina Rd., Medina, OH 44256. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215, Transporting (1) *metal articles,* (2) *railroad equipment and railroad equipment parts,* and (3) *equipment, materials and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, (a) between points in IL, IN, MI, MO, OH, PA, WV, KY, NY, NJ, MD, and DE, and (b) between points in IL, IN, MI, NY, NJ, MO, OH, PA, KY, WV, and MD, on the one hand, and, on the other, points in IA, WI, AR, TX, OK, FL, MS, GA, TN, SC, and NC.

MC 135616 (Sub-23F), filed October 27, 1980. Applicant: PERRYSBURG TRUCKING, INC., 24892 Thompson Rd., Perrysburg, OH 43551. Representative: E. Stephen Heisley, Suite 805, 666 Eleventh St., NW., Washington, DC 20001. Transporting *glass,* and *materials, equipment, and supplies* used in the manufacture and distribution of glass, between points in the U.S. under continuing contract(s) with Guardian Industries Corp., of Carleton, MI.

MC 135616 (Sub-24F), filed October 28, 1980. Applicant: PERRYSBURG TRUCKING, INC., 24892 Thompson Rd., Perrysburg, OH 43551. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. Transporting *glass,* and *materials, equipment, and supplies* used in the manufacture and distribution of glass, between points in the U.S., under continuing contract(s) with PPG Industries, Inc., of Pittsburg, PA.

MC 138826 (Sub-12F), filed October 27, 1980. Applicant: JERALD HEDRICK, d.b.a HEDRICK & SON TRUCKING, Rural Rt. #1, Warren, IN 46792. Representative: Robert A. Kriscunas, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting *fertilizer and fertilizer materials,* in bulk, between points in IL, IN, MI, and OH.

MC 139006 (Sub-19F), filed October 26, 1980. Applicant: RAPIER SMITH, Rural Rt. 5, Loretto Rd., Bardstown, KY 40004. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602. Transporting (1)(a) *furniture parts,* and (b) *iron and steel articles,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S. (except AK and HI).

MC 139006 (Sub-20F), filed October 27, 1980. Applicant: RAPIER SMITH, Rural Rt. 5, Loretto Rd., Bardstown, KY 40004. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602. Transporting *alcoholic beverages,* from Lawrenceburg, IN, Bardstown, Frankfort, Loretto, Louisville, and Paducah, KY, St. Louis, MO, Linden, NJ, Schenley, PA, and Tullahoma, TN, to Albany, GA.

MC 139906 (Sub-135F), filed October 29, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Transporting *clay and clay products,* between points in GA, on the one hand, and, on the other, points in the U.S.

MC 143917 (Sub-6F), filed October 27, 1980. Applicant: SAM YOUNG, INC., P.O. Box 337, Wolcott, IN 47995. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St. NW., Washington, DC 20001. Transporting *foodstuffs,* and *materials, equipment and supplies* used in the manufacture and distribution of foodstuffs, beween points in the U.S., under continuing contract(s) with Griffth Laboratories U.S.A., Inc., of Alsip, IL.

MC 142976 (Sub-5F), filed October 27, 1980. Applicant: JOHN D. PERFETTI, R.D. #4 Box 265C, Blairsville, PA 15717. Representative: Arthur Diskin, Suite 806, Frick Bldg., Pittsburgh, PA 15219. Transporting (1) *iron and steel articles* and (2) *materials, equipment, and supplies* used in the manufacture of commodities in (1) above, between points in the U.S. (except AK and HI), under continuing contract(s) with National Roll, Division General Steel Industries, Inc., of Avonmore, PA.

MC 146336 (Sub-15F), filed October 29, 1980. Applicant: WESTERN TRANSPORTATION SYSTEMS, a corporation, 1609 109th St., Grand Prairie, TX 75050. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Transporting (1) *disposable surgical supplies,* and (2) *materials* used in the manufacture of disposable surgical supplies, between points in the U.S., under continuing contract(s) with Surgikos, Inc., of Arlington, TX.

MC 150206 (Sub-1F), filed October 23, 1980. Applicant: DANTE GENTILINI TRUCKING, INC., P.O. Box 387, West Chicago, IL 60185. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL 60016. Transporting (1) *plastic articles,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of plastic articles between points in DuPage County, IL, on the one hand, and, on the other, points in IA, IN, MI, MN, MO, OH, and WI.

MC 15196 (Sub-1F), filed October 27, 1980. Applicant: BOB WHITAKER & SON, INC., P.O. 65, Roswell, NM 88201. Representative: Bruce C. Harrington, Kansas Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS 66612. Transporting *meats, meat products and meat by-products, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and liquid commodities in bulk), from the facilities of John Morrell & Co., in El Paso, Lubbock, and Potter Counties, TX to points in AL, AZ, CA, FL, GA, LA, MS, NM, NC, SC and TN.

MC 152466F, filed October 14, 1980. Applicant: MOUNTAIN TOP TOURS, INC., 39 Carol Dr., Englewood Cliffs, NJ 07632. Representative: Charles J. Williams, 1815 Front St., Scotch Plains, NJ 07076. To operate as a *broker* at Engelwood Cliffs and Fort Lee, NJ, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in special or charter operations, between points in the US.

By the Commission.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 80-35832 Filed 11-17-80; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council Committees; Meetings and Agenda

The regular fall meetings of committees of the Labor Research Advisory Council will be held on December 9, 10, and 11 in Room N-5437, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members.

The schedule and agenda of the meetings are as follows:

Tuesday, December 9

9:30 a.m.—Committee on Productivity, Technology and Economic Growth

1. Update of 1990 growth projections
2. Job skill requirements for new energy program requirements
3. Current industry technology studies
4. Elements contributing to productivity growth

Tuesday, December 9

1:45 p.m.—Committee on Employment Structure and Analysis

1. Establishment reporting (790) program for implementing recommendations of National Commission on Employment and Unemployment Statistics
2. Job vacancy study—results to date
3. Technical aspects and policy uses of ES 202 reports
4. Status of local area unemployment statistics
5. Current Population Survey—progress on recommendations of National Commission on Employment and Unemployment Statistics
6. Measurement of discouragement

Wednesday, December 10

9:30 a.m.—Committee on Prices and Living Conditions

1. The September 1980 Producer Price Index
2. Status report on housing in the Consumer Price Index
3. Status of the review of the Family Budget Committee Report

Wednesday, December 10

1:45 p.m.—Committee on Wages and Industrial Relations

1. Review of work in progress
2. Long-range planning of Office of Wages and Industrial Relations
3. Public sector bargaining settlements
4. Private sector employee benefits

Thursday, December 11

9:30 a.m.—Committee on Foreign Labor and Trade

1. International productivity comparisons
2. International gross domestic product comparisons

The meetings are open. It is suggested that persons planning to attend as observers contact Joseph P. Goldberg, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523-1247.

Signed at Washington, D.C. this 10th day of November 1980.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 80-35047 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-24-M

Office of the Secretary

Tripartite Advisory Panel on International Labor Standards; Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (P.L. 92-463), announcement is hereby given of a meeting of the Tripartite Advisory Panel on International labor Standards, which is a subcommittee of the President's Committee on the International Labor Organization. This meeting will be an continuation of the meeting which was held on November 6, 1980.

Name: Tripartite Advisory Panel on International Labor Standards

Date: November 24, 1980

Time: 9:00 A.M.

Place: Department of Labor, 3rd and Constitution Ave., N.W., Room S-2217, Washington, D.C. 20210

This meeting will be closed to the public under authority of Section 10(d) of the Federal Advisory Committee Act, as amended. During its closed session, the Committee will discuss information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. It is not practicable to segregate a portion of the meeting to permit public participation.

All communications regarding this subcommittee should be addressed to Carin A. Clauss, Solicitor of Labor, U.S. Department of Labor, 3rd and Constitution Ave., N.W., Washington, D.C. 20210, telephone (202) 523-7675.

Carin Ann Clauss,

Solicitor of Labor.

[FR Doc. 80-35033 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8910]

Accurate Die and Manufacturing Corp.; Negative Determination on Reconsideration

On September 26, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers fabricating and painting automotive components from pre-stamped metal parts for assembly into cars and trucks.

In the company official's application for reconsideration, he refuted the Department's negative determination issued on August 11, 1980 that Accurate did not produce an article within the meaning of Section 222(3) of the Act. The applicant claimed that Accurate not only paints automotive parts as stated in the denial, but on many jobs, the company buys and receives components, fabricates, assembles, and paints, before the part is assembled to cars and trucks.

Generally, Accurate Die and Manufacturing receives stamped metal parts from automotive component manufacturers which Accurate assembles with spot, wire and arc welding to fabricate under-the-hood and cross-members for frames with brackets and braces. Accurate also performs riveting operations attaching brackets to catalytic converter shields.

On reconsideration, the Department found that the level of imports of various stamping products are a negligible proportion of total U.S. production.

Further, in response to the applicant's claim concerning the decreased employment of Accurate's workers due to imported vehicles already fitted with the fabricated assemblies, imported vehicles cannot be considered to be like or directly competitive with the automotive metal parts fabricated by Accurate Die and Manufacturing Corporation. The Department has previously determined that a finished article is not like or directly competitive with its component parts. This position is supported by the courts.

A survey of customers who are the end users of Accurate Die and Manufacturing Corporation's products revealed that most customers did not import products like or directly competitive with those produced at Accurate. A major customer who did show increased imports also increased its purchases from all domestic sources other than its own in-house production.

Conclusion

After reconsideration, notwithstanding the Department's acknowledgment that Accurate Die and Manufacturing Corporation does produce an article within the meaning of Section 222(3) of the Act, I reaffirm the original Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance to workers and former workers of Accurate Die and Manufacturing Corporation, Detroit, Michigan.

Signed at Washington, D.C., this 10th day of November 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-35029 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7788]

Clark Reed Shake Co.; Revised Determination on Reconsideration

On October 3, 1980, the Department made an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Clark Reed Shake Company, Quinault, Washington. This determination was published in the Federal Register on October 17, 1980 (45 FR 69074).

The applicants principally claim that (1) Canadian imports of cedar shakes at lower prices caused a downturn in employment and sales at Clark Reed Shake Company; (2) company sales are made through brokers who distribute the shake products to the brokers'

customers, and these same brokers buy shakes from other mills that have been declared eligible for Trade Act benefits; (3) that increases in value of Clark Reed cedar shake sales in 1979 were due to inflation; and (4) increased employment in 1979 was due to the installation of an extra saw to handle rougher types of wood.

The Department's review indicated that workers at Clark Reed Shake Company at Quinault, Washington were denied because they did not meet the "contributed importantly" test of the Trade Act of 1974. The denial was based on a customer survey and on sources which cited the sharp downturn in the home construction industry as the primary reason for the reduction in purchases of shakes.

The Department found in its reconsideration investigation that notwithstanding increased sales and employment in 1979 all the criteria for adjustment assistance were met in the first quarter of 1980 compared to the same period in 1979. In this period, customers' imports increased substantially at a time when purchases from the firm and other domestic sources dropped sharply.

Conclusion

After careful review of the facts obtained on reconsideration, it is concluded that increased imports of cedar shakes contributed importantly to the total or partial separation of workers and former workers at Clark Reed Shake Company, Quinault, Washington. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers at Clark Reed Shake Company, Quinault, Washington, who became totally or partially separated from employment on or after October 1, 1979, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1980.

James F. Taylor,

Director, Office of Management Administration and Planning.

[FR Doc. 80-35926 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,690]

Dayton Malleable, Inc., Ohio Division; Termination of Investigation

Pursant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 15, 1980 in response to a worker petition received on September 5, 1980 which was filed on behalf of all workers producing malleable iron castings at Dayton Malleable, Incorporated, Ohio Division, Columbus, Ohio.

During the course of the investigation, it was established that all workers at Dayton Malleable, Incorporated, Ohio Division were previously denied eligibility to apply for adjustment assistance on August 28, 1980 (see TA-W-7744). That investigation was initiated on April 28, 1980 in response to a worker petition which had been signed on April 2, 1980.

Dayton Malleable was closed on May 30, 1980 prior to the completion of the previous investigation, and has not since reopened. No new evidence has been offered; therefore, the findings of the previous investigation are still valid and further consideration would serve no purpose. Consequently, the investigation is terminated.

Signed at Washington, D.C. this 7th day of November 1980

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-35925 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-7650]

Firestone Synthetic Rubber and Latex Co.; Negative Determination Regarding Application for Reconsideration

By application dated October 9, 1980, the petitioner, the United Rubber Workers, requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers producing latex for tire manufacturing at Firestone's Akron, Ohio plant. The determination was published in the Federal Register on September 19, 1980, (45 FR 62589).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The union claims that some of the production from Firestone's Akron, Ohio latex plant was integrated into the production of tire cord which, in turn, was used in the production of tires by the parent company's tire plants, some of which had workers certified for trade adjustment assistance.

The Department's review showed that workers producing latex at the Akron, Ohio plant did not meet the "contributed importantly" test of the Trade Act of 1974. The Department's survey of customers of the Firestone Synthetic Rubber and Latex Company showed that most customers either did not purchase imported synthetic latex or decreased purchases of imports in 1979 compared to 1978 and in the first four months of 1980 compared to the same period in 1979. Customers increasing imports and decreasing purchases from Firestone during the same periods represented an insignificant proportion of Firestone's sales of synthetic latex.

The Department found that the degree of integration of Akron's synthetic latex into the production of Firestone tires (which the Department has found to be import-impacted) was not significant. Therefore, the certification of Firestone tire workers could not serve as a basis for certification of workers producing the synthetic latex. Firestone Akron, Ohio latex plant produces latex primarily for carpeting, floor tile, adhesives and chewing gum. The investigation indicated that less than 5 percent of Akron's latex production was used in the production of tires.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 10th day of November 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-35927 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8223]

Ford Motor Co., Truck Operations General Office; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance on August 1, 1980, applicable to all workers of Truck Operations General Office of the Ford Motor Company, Dearborn, Michigan.

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the certification. The additional information revealed that some layoffs occurred just prior to the impact date. These layoffs were not covered by the original impact date of May 1, 1980.

The intent of the certification is to cover all workers who were affected by the decline in truck operations related to import competition at the Ford Motor Company, Dearborn, Michigan. The certification, therefore, is amended to include a new impact date of April 15, 1980.

The amended certification applicable to TA-W-8223 is hereby issued as follows:

All workers in Truck Operations General Service of the Ford Motor Company, Dearborn, Michigan who became totally or partially separated from employment on or after April 15, 1980 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 7th day of November 1980.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 80-35821 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-11,140]

J. H. Woods, Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 29, 1980, in response to a worker petition received on September 26, 1980, which was filed on behalf of workers and former workers producing cedar shakes and shingles at J. H. Woods, Incorporated, Lebam, Washington.

On September 15, 1980, a petition was filed on behalf of the same group of workers (TA-W-11,014).

Since the petitions were filed on behalf of the identical group of workers, conducting both investigations would serve no purpose. Therefore the investigation under TA-W-11,140 has been terminated.

Signed at Washington, D.C. this 7th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-35928 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10-686]

Jo-Ad Industries, Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 8, 1980 in response to a worker petition received on September 2, 1980 which was filed on behalf of workers and former workers producing automotive parts, including experimental prototype parts, wood die models, metal molds and checking fixtures, at Jo-Ad Industries, Incorporated, Madison Heights, Michigan.

In a letter dated October 16, 1980, the petitioner requested that the petition be withdrawn. On the basis of this withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 7th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-35930 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10, 709]

Keller Bath Enclosures; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 15, 1980 in response to a worker petition received on September 5, 1980 which was filed by the Upholsterers' International Union of North America, AFL-CIO on behalf of workers at Keller Bath Enclosures, Swainsboro, Georgia. The workers produce bath enclosures.

In a letter dated September 23, 1980 the petitioner requested withdrawal of the petition. On the basis of this withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 7th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-35934 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,710]

Keller Perfection Aluminum Products, Inc.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 15, 1980 in response to a worker petition received on September 5, 1980 which was filed by the Upholsterers' International Union of North America, AFL-CIO on behalf of workers at Keller Perfection Aluminum Products, Incorporated, Swainsboro, Georgia. The workers produce aluminum storm windows and doors.

In a letter dated September 23, 1980 the petitioner requested withdrawal of the petition. On the basis of this withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 7th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-35923 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-10,726]

Lamson and Sessions Co.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation (TA-W-10,726) was initiated on September 15, 1980 in response to a petition received on September 8, 1980 which was filed by the United Steelworkers of America on behalf of workers at The Lamson and Sessions Company, Birmingham, Alabama. The workers produce standard and specialty nuts and bolts.

On July 28, 1980 an investigation (TA-W-9583) was initiated in response to a petition received on July 9, 1980, which was filed by the International Association of Machinists and Aerospace Workers on behalf of the same group of workers.

Since the identical group of workers is the subject of ongoing investigation TA-W-9583, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 12th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-35931 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8032]

Lobdell-Emery Manufacturing Co., Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding

certification of eligibility to apply for workers adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers; firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both of the firm or subdivision have decreased absolutely.

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation was initiated on May 9, 1980 in response to a petition which was filed by the United Auto Workers on behalf of workers at the Alma, Michigan plant of Lobdell-Emery Manufacturing Company. Workers produce interior trim parts and stampings of roofs, bumpers and chassis for automobiles.

The investigation revealed that criterion (3) has not been met.

Workers at the Alma, Michigan plant of Lobdell-Emery Manufacturing Company are not separately identifiable by product line. Chassis production accounts for the majority of total company production.

A survey conducted by the Department revealed that major surveyed customers of Lobdell-Emery Manufacturing Company did not purchase imported automotive stampings of chassis, the company's major product, or roofs in model year (MY) 1979 or MY 1980. Import purchases by surveyed customers of automotive interior trim parts and bumpers amounted to a relatively small percent of total customer purchases of these products in MY 1979 and MY 1980.

Petitioners allege that increased imports of automobiles have contributed importantly to declines in sales, production and employment at the Alma, Michigan plant of Lobdell-Emery Manufacturing Company. Although imported automobiles incorporate interior trim parts and stampings of roofs, bumpers and chassis for automobiles, imports of the whole product are not like or directly competitive with their component parts. Imports of interior trim parts and stampings of roofs, bumpers and chassis for automobiles must be considered in determining import injury to workers producing such products at the Alma, Michigan plant of Lobdell-Emery Manufacturing Company.

Conclusion

After careful review, I determine that all workers of the Alma, Michigan plant of Lobdell-Emery Manufacturing Company are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 10th day of November 1980.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 80-35928 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8880]

Red Cedar Products; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 23, 1980 in response to a worker petition received on May 21, 1980 which was filed on Behalf of workers and former workers producing red cedar shakes for Red Cedar Products, Amanda Park, Washington.

In a letter dated October 28, 1980 the petitioners requested withdrawal of the petition. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently the investigation has been terminated.

Signed at Washington, D.C. this 7th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-35922 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-8864]

Wear-A-Knit Corp.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 16, 1980 in response to a worker petition received on June 10, 1980 which was filed on behalf of workers at Wear-A-Knit Corporation, Cloquet, Minnesota. The workers produce sweaters, dickies, hats and scarves.

The petitioner requested withdrawal of the petition in a letter. On the basis of the withdrawal, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 12th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-35930 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period November 3–7, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

TA-W-9327; Sterling Die Operations, Colt Industries, Inc., Cleveland, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9722; U.S. Steel Corp., Southern District Mines, Shelby County, AL

Investigation revealed that criterion (3) has not been met. The Southern District Mines supplied metallurgical coal to the Fairfield Works of U.S. Steel. The Fairfield Works are not currently under an active certification of eligibility to apply for worker adjustment assistance.

TA-W-10,504; Collins & Aikman Corp., Bangor Division, Cowpens, SC

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of finished fabric did not increase as required for certification.

TA-W-8922; Inmont Corporation, Hawthorne, NJ

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of pigments and printing inks did not increase as required for certification.

TA-W-8805; R&R Tool and Die Company, Detroit, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of tools and dies are negligible.

TA-W-7690; Davis Tool and Engineering Company, Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-7688 & 7689; Hillsdale Tool and Mfg. Co. & Daisy Parts, Inc., Hillsdale, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-10,577; Jacklin Steel Supply Co., Lansing, MI

Investigation revealed that the workers do not produce an article as required for decertification under Section 223 of the Act.

TA-W-10,265; Birmingham Southern Railroad Co., Fairfield, AL

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

TA-W-8817; Jodi Scott Dress Co., Pitman, NJ

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8699; Woodbury Dress Co., Woodbury, NJ

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the firm.

TA-W-8604; Norris Industries, O. L. Anderson Company Plant, Detroit, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sale declines and worker separations at the firm.

TA-W-8151; Annex Pattern Co., Inc., Southfield, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8874; Terry machine Company, Waterford, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8147; Sherwood Pattern Co., Walled Lake, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9351; Union Camp Corp., Lapeer, MI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports or corrugated boxes are negligible.

TA-W-8339; Pattern Associates Inc., Troy, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7954; ETM Enterprises, Inc., Grand Ledge, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7719; Outboard Marine Corp., Evinrude Motors Division, Milwaukee, WI

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of 70 to 235hp outboard motors did not increase as required for certification.

TA-W-8314; Katherina Reinert Knitwear Service, Queens, NY

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8118; Bohn Aluminum and Brass, Div. of Gulf and Western Ind., Adrian, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9027; Hill-Tone Coat and Suit Co., Burlington, NJ

Investigation revealed that criterion (2) has not been met.

TA-W-9141; Crimtex Inc., San German, Puerto Rico

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of yearn did not increase as required for certification.

TA-W-10,453; Bridgeport Bass Co., Bridgeport, CT

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of copper rods, sheet, and wire did not increase as required for certification.

TA-W-10,532; Delta Tube and Fabricating Corp., Holly, MI

Investigation revealed that criterion (3) has not been met. U.S. imports of storage containers are negligible.

TA-W-10,903; McIntee Motors, Struthers, OH

Investigation revealed that the workers do not produce an article as required for certification under section 223 of the Act.

TA-W-8921, 9074, & 9075; Firestone Textiles Co., Bowling Green, KT; Gastonia, KT; and Bennettsville, SC

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated

that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8335; Fairway Model and Mold, Inc., Mt. Clemens, MI

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-9192; Firestone Tire and Rubber Co., Akron 1 Plant, Akron, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-8015; Eaton Corp., Tinnerman Plant, Cleveland, OH

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

TA-W-7932; Armstrong Rubber Co., New Haven, CT

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of car and truck tires did not increase as required for certification.

TA-W-7679; FMC Corp., Chain Division, Indianapolis, IN

Investigation revealed that criterion (3) has not been met. A survey of customers of the subject firm indicated that increased imports did not contribute importantly to sales declines and worker separations at the subject firm.

Affirmative determinations

TA-W-8930; Midwest Handbag Co., St. Louis, MO

A certification was issued applicable to all workers at the subject firm separated on or after June 4, 1979.

TA-W-7735; Radar Industries, Inc., Roseville MI

With respect to workers producing brackets and hinges, the investigation revealed that criterion (3) has not been met. Surveyed customers did not increase purchases of imports while reducing purchases from the subject firm.

With respect to workers producing pulleys, a certification was issued applicable to all such workers separated on or after May 7, 1979 and before May 1, 1980.

TA-W-9570; General Motors Corp., GM Assembly Div., Linden, NJ

A certification was issued covering all workers of the firm separated on or after April 1, 1980.

TA-W-10,420; Lucas Chrysler-Plymouth, Inc., Maumee, OH

A certification was issued covering all workers of the firm separated on or after August 1, 1979 and before October 1, 1980.

TA-W-9379; Ken Brown Motor Co., Inc., Detroit, MI

A certification was issued covering all workers of the firm separated on or after October 1, 1979 and before October 1, 1980.

I hereby certify that the aforementioned determinations were issued during the period November 3-7, 1980. Copies of these determinations are available for inspection in Room S-5314, U.S. Department of Labor, 200 Consititution Avenue, NW, washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

Dated: November 12, 1980

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 80-35918 Filed 11-17-80; 8:45 am]

BILLING CODE 4510-28-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are indentified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2 of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below; not later than November 28, 1980.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address show below, not later than November 28, 1980.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of November 1980.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
BASF Wyandotte (URW)	South Kearny, NJ	11-3-80	10-27-80	TA-W-11,606	Dyestuffs.
Garon Knitting Mills (workers)	Duluth, MN	10-31-80	10-27-80	TA-W-11,607	Caps.
Garon Knitting Mills (workers)	Duluth, MN	10-31-80	10-27-80	TA-W-11,608	Caps, sweaters, and mittens.
H. L. Friedlen & Co. (workers)	Allegan, MI	10-31-80	10-25-80	TA-W-11,609	Outerwear.
Henry Richards Co. (ILGPNW)	Hamden, CT	11-3-80	10-28-80	TA-W-11,610	Ladies handbags—vinyl.

qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Provisional Operating License No. DPR–18 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–18 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Harry H. Voight, Esquire, LeBoeuf, Lamb, Leiby & MacRae, 1333 New Hampshire Avenue, NW., Suite 1100, Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35485 Filed 11-12-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station); Order for Modification of License

I

The Sacramento Municipal Utility District (licensee) is the holder of Facility Operating License No. DPR–54, which authorizes the operation of the Rancho Seco Nuclear Generating Station, at steady state reactor power levels not in excess of 2772 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Sacramento County, California.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advsiory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

October 12, 1980.

[FR Doc. 80–35908 Filed 11–17–80; 8:45 am]

BILLING CODE 7537–01–M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committe Act (Pub. L. 92.463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 806 15th Street, NW., Washington, DC 20506:

Date: December 3, 4, and 5, 1980.
Time: 9:00 a.m. to 5:00 p.m.
Room: 1st Floor Conference Room.
Program: This meeting will review applications submitted for General Research Program: State, Local and Regional Studies projects, Division of Research Programs, for projects beginning after March 1, 1981.

Date: December 8, 1980.
Time: 9:15 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in American Literature, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

Date: December 10, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314
Program: This meeting will review applications for Summer Stipends in Early English, and Medieval and Renaissance European Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

Date: December 10, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Early English, and Medieval and Renaissance European Literatures, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

Date: December 12, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Political Science and Economics, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

Date: December 13, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

Date: December 13, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in Religion, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

Date: December
Time: 9:00 a.m. to 5:30 p.m.
Room: 314.
Program: This meeting will review applications for Summer Stipends in American Studies and Cultural History, submitted to the Division of Fellowships and Seminars, for projects beginning after January 1, 1981.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose,

(1) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) information the disclosure of which would significantly frustrate implementation of proposed agency action;

pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stepehn J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 724–0346.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 80–35878 Filed 11–17–80; 8:45 am]

BILLING CODE 7536–01–M

NAVAJO AND HOPI INDIAN RELOCATION COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Navajo and Hopi Indian Relocation Commission.

ACTION: Notice of Change in System of Records.

SUMMARY: The Commission is issuing notice of changes of categories of records in its system and of routine uses of records maintained in the system. The intended purpose of this notice is to fulfill the notice requirements of the Privacy Act of 1974.

EFFECTIVE DATE: November 18, 1980.

FOR FURTHER INFORMATION CONTACT: Paul M. Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, AZ 86002. Telephone No.: (602) 779–3311, ext. 1376, FTS: 261–1376.

SUPPLEMENTARY INFORMATION: The Navajo and Hopi Indian Relocation Amendments Act of 1980, 25 U.S.C. 640–d, 94 Stat. 929, P.L. 96–305, Sec. 30(b), (hereinafter, the Amendments Act), requires that the Commission promulgate regulations concerning application procedures for Life Estate Leases by members of the Navajo and Hopi Tribes who are subject to relocation. The Amendments Act has required changes in the Commission's System of Records. This notice of change of system of records is published to fulfill the requirements of the Privacy Act of 1974.

The Commission has added a fourth category of individuals covered by the system: persons who apply for Life Estate Leases.

The Commission has added a fifth category of records in the system: Life Estate Lease Application.

The Commission has also added another primary use of the records in the system: to determine . . . "(d) those individuals who are eligible for Life Estate Leases and the location of such Life Estate parcels."

Finally, the Commission has amended that portion of the notice relating to disclosure outside the Navajo and Hopi Indian Relocation Commission. The Commission has determined that disclosures may be made to: "Tribal Governments in determining the configuration of Life Estate parcels."

The principal author is William G. Lavell, Field Solicitor, Valley National Bank Center, Suite 2080, 201 North Central, Phoenix, Arizona 85073.

Accordingly, the Commission's Notice of System of Records, published in the Federal Register on May 8, 1980, at Vol.

45, No. 91, p. 30577, is amended to read as follows:

SYSTEM NAME:

Navajo and Hopi Relocation Commission Records System.

SYSTEM LOCATION:

Navajo and Hopi Indian Relocation Commission, 2717 N. Steves Boulevard, Building A, Flagstaff, Arizona 86001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Those members of the Navajo Tribe residing in that portion of the Joint Use Area of Arizona which has been partitioned to the Hopi Tribe.

(2) Those members of the Hopi Tribe residing in that portion of the Joint Use Area of Arizona which has been partitioned to the Navajo Tribe.

(3) Persons who apply to the Commission for relocation benefits.

(4) Persons who apply to the Commission for Life Estate leases.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Relocation Applications,

(2) Census Information,

(3) Inventories of livestock and property improvements,

(4) Appraisal of Improvements, and

(5) Life Estate Applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

25 U.S.C. 640(d), 25 U.S.C. 361, et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDE CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records are to determine: (a) those individuals who are entitled to relocation benefits, (b) the amount of benefits to which individuals are entitled, (c) where relocations may occur, and (d) those individuals who are eligible for Life Estate Leases and the location of such Life Estate Lease parcels. Disclosures outside the Navajo and Hopi Indian Relocation Commission may be made to: (a) Tribal Governments for use in adjudicating disputes and in determining the configuration of Life Estate Lease parcels, (b) to United States Courts concerned with the partition of the Joint Use Area, (c) to the Department of Justice when related to litigation or contemplated litigation, (d) to appropriate Federal, State, Local, or Foreign Agency responsible for investigating or prosecuting violations or for enforcing or implementing a statute, rule, regulation, order, or license of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, (e) reports to the United States Congress, and (f) publication of rosters to assist potential relocatees in determining their application and eligibility status.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Manual: letter files.

RETRIEVABILITY:

Indexed by name of individual, retrieved by manual search.

SAFEGUARDS:

In accordance with 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records will be disposed of when the Commission is discharged pursuant to 25 U.S.C. 640d-11(i).

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Navajo and Hopi Indian Relocation Commission, P.O. Box KK, Flagstaff, Arizona 86002.

NOTIFICATION PROCEDURE:

To determine whether records in this system are maintained on an individual, the individual must contact the System Manager.

RECORD ACCESS PROCEDURES:

For access to individual's records, the individual must contact the System Manager and describe as specifically as possible the records sought and, if copies are desired, indicate the maximum copy fee the individual is willing to pay.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information is obtained from:

(1) Information obtained from individuals who apply for relocation benefits and/or for Life Estate leases.

(2) Information obtained from other United States governmental agencies concerning individuals who may or may not be entitled to relocation benefits.

(3) Information obtained from surveys taken on the Joint Use Area.

(4) Information obtained from the Navajo Tribe or the Hopi Tribe concerning its members entitled to relocation benefits.

(5) Information obtained from Chapter Officials of the Navajo Tribe concerning members of their chapter who may be entitled to relocation benefits.

Sandra L. Massetto,

Chairperson, Navajo and Hopi Indian Relocation Commission.

[FR Doc 80-35911 Filed 11-17-80; 8:45 am]

BILLING CODE 4310-HB-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-336]

Northeast Nuclear Energy Co. et al.; Order for Modification of License

I

In the matter of Northeast Energy Company, Connecticut Light and Power Company, Hartford Electric Light Company, Western Massachusetts Electric Company (Millstone Nuclear Power Station Unit No. 2)

Northeast Nuclear Energy Company, et al. (licensee) is the holder of License No. DPR-65, which authorizes the operation of the Millstone Nuclear Power Station, Unit No. 2 at steady state reactor power levels not in excess of 2,700 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site in the Town of Waterford, Connecticut.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operation reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on

Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-65 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR-65 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG-0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to William H. Cuddy, Esq., Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35476 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-285]

Omaha Public Power District (Fort Calhoun Station, Unit No. 1); Order for Modification of License

I

Omaha Public Power District (licensee) is the holder of License No. DPR-40, which authorizes the operation of the Fort Calhoun Station, Unit No. 1 at steady state reactor power levels not in excess of 1500 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site in Washington County, Nebraska.

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

II

On November 4, 1977, the Union of Concerned Scientists (USC) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588."

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation reqirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, " do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt comlpetion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–40 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG–0588. "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–40 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Marilyn A. Tebor, Esq., LeBoeuf, Lamb, Leiby & MacRae, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35477 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-277]

Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Unit No. 2); Order for Modification of License

I

Philadelphia Electric Company (licensee) and three other co-owners are the holders of Facility Operating License No. DPR-44, which authorizes the operation of the Peach Bottom Atomic Power Station, Unit No. 2, at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Peach Bottom, York County, Pennsylvania.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas; fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978, decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980, decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980, Memorandum and Order that by no later than June 30, 1982, all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualifed components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-44 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License DPR-44 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG-0588. Thereafter, such records should be

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[1] Bullentin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW, Washington, D.C. 20006, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1082.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceeding on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35478 Filed 11-17-80: 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-278]

Philadelphia Electric Company, et al. (Peach Bottom Atomic Power Station, Unit No. 3); Order for Modification of License

I

Philadelphia Electric Company (licensee) and three other co-owners are the holders of Facility Operating License No. DPR-56, which authorizes the operation of the Peach Bottom Atomic Power Station, Unit No. 3, at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Peach Bottom, York County, Pennsylvania.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. USC filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978, decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980, decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980, Memorandum and Order that no later than June 30, 1982, all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is order that effective immediately Facility Operating License No. DPR-56 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualifications of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License DPR-56 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG-0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, 20555. A copy of the request shall also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW, Washington, DC 20006, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee shall be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment shall be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35479 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-344]

Portland General Electric Company, the City of Eugene, Oregon, Pacific Power and Light Company (Trojan Nuclear Plant); Order for Modification of License

I

Portland General Electric Company, et al. (licensee) is the holder of License No. NPF-1, which authorizes the operation of the Trojan Nuclear Plant at steady state reactor power levels not in excess of 3411 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site near Rainier, Oregon.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978, decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980, decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

requirement of the Commission's May 23, 1980, Memorandum and Order that by no later than June 30, 1982, all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. NPF–1 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. NPF–1 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to J. W. Durham, Esq., Vice President and Corporate Counsel, Portland General Electric Company, 121 S. W. Salmon Street, Portland, Oregon 97204, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-36480 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Order for Modification of License

I

The Power Authority of the State of New York (licensee) is the holder of Facility Operating License No. DPR–59 which authorizes the operation of the James A. FitzPatrick Nuclear Power Plant at power levels up to 2436 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Oswego County, New York.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

operating plants shall be qualified to the DOR Guidelines or NUREG–0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–59 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–59 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980 Bethesda, Md.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35481 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-286]

Power Authority of the State of New York (Indian Point Station, Unit No. 3); Order for Modification of License

I

The Power Authority of the State of New York the (licensee) is the holder of Facility Operating License No. DPR–64, which authorizes the operation of the Indian Point Plant Unit No. 3 at steady state reactor power levels not in excess of 3025 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Westchester County, New York.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating

Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirments which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–64 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–64 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles M. Pratt, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980
Bethesda, Md.

For The Nuclear Regulatory Commission.
Darrell G. Eisenhut,
Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35482 Filed 11-17-80; 8:45 am]
BILLING CODE 7590-01-M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50–267]

Public Service Company of Colorado (Fort St. Vrain Nuclear Generating Station); Order for Modification of License

I

The Public Serivce Company of Colorado (licensee) is the holder of License No. DPR–34 which authorizes the operation of the Fort St. Vrain Nuclear Generating Station at steady state reactor power levels not in excess

of 842 megawatts thermal (rated power) with a current hold at 70%. The facility consists of a Gas-Cooled reactor located at the licensee's site in Weld County, Colorado.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guildelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualifcation of safety-related eletrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–34 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines), or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979, to the extent applicable to a gas cooled reactor. Copies of these documents are attached to Order for Modification of License No. DPR–34 dated October 27, 1980.

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related elecrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588, to the extent applicable to a gas cooled reactor. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Bryant O'Donnell, Esq., Kelly, Stansfield and O'Donnell, at 9900 Public Service Company Building, Denver, Colorado 80202, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by not later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 27, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Divison of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35483 Filed 11-17-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-272]

Public Service Electric & Gas Co. (Salem Nuclear Generating Station, Unit No. 1); Order for Modification of License

I

Public Service Electric and Gas Company (the licensee) is the holder of Facility Operating License No. DPR-70 which authorizes the operation of the Salem Nuclear Generating Station, Unit No. 1 at steady state reactor power levels not in excess of 3338 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Salem County, New Jersey.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progesss reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-70 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualifications of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

documents are attached to Order for Modification of License No. DPR-70 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG-0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mark J. Wetterhahn, Esquire, Conner, Moore and Corber, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35484 Filed 11-17-80; 8:45 am]

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[Docket No. 50-244]

Rochester Gas & Electric Company's R. E. Ginna Nuclear Power Plant; Order for Modification of License

I

Rochester Gas & Electric Company (the licensee) is the holder of Provisional Operating License No. DPR-18, which authorizes the operation of R. E. Ginna Nuclear Power Plant at steady-state reactor power levels not in excess of 1520 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Wayne County, New York.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certin actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Evironmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–54 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors 'Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors' (DOR Guidelines); or, NUREG–0588, 'Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment,' December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–54 dated October 24, 1980."

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to David S. Kaplan, Secretary and General Counsel, 6201 S Street, P.O. Box 15830, Sacramento, California 95814, Attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35406 Filed 11-17-80; 8:45 am]

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[Docket No. 50-206]

Edison Company and San Diego Gas and Electric Company's San Onofre Nuclear Generating Station; Order for Modification of License

I

Southern California Edison Company and San Diego Gas and Electric Company (the licensees) are the holders of Provisional Operating License No. DPR–13, which authorizes the operation of San Onofre Nuclear Generating Station at steady state reactor power levels not in excess of 1347 megawatts thermal (rated power). The facility consists of a Pressurized water reactor located at the licensee's site in San Diego County, California.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980, decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion

staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–54 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors 'Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors' (DOR Guidelines); or, NUREG–0588, 'Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment,' December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–54 dated October 24, 1980."

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to David S. Kaplan, Secretary and General Counsel, 6201 S Street, P.O. Box 15830, Sacramento, California 95814, Attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35406 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-206]

Edison Company and San Diego Gas and Electric Company's San Onofre Nuclear Generating Station; Order for Modification of License

I

Southern California Edison Company and San Diego Gas and Electric Company (the licensees) are the holders of Provisional Operating License No. DPR–13, which authorizes the operation of San Onofre Nuclear Generating Station at steady state reactor power levels not in excess of 1347 megawatts thermal (rated power). The facility consists of a Pressurized water reactor located at the licensee's site in San Diego County, California.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980, decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion

(GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Provisional Operating License No. DRP-13 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR-13 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and audible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG-0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles L. Kocher, Assistant General Counsel, Southern California Edison Company, Post Office Box 800, Rosemead, California 91770, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35487 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-259]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit 1); Order for Modification of License

I

The Tennessee Valley Authority (licensee) is the holder of Facility Operating License No. DPR-33 which authorizes the operation of the Browns Ferry Nuclear Plant, Unit 1, at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaulation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–33 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–33 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Techincal Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B, 33C Knoxville, Tennessee 37902, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35488 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-260]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit 2); Order for Modification of License

I

The Tennessee Valley Authority (licensee) is the holder of Facility Operating License No. DPR-52 which authorizes the operation of the Browns Ferry Nuclear Plant, Unit 2, at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-52 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR-52 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG-0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B, 33C Knoxville, Tennessee 37902, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35489 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-296]

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit 3); Order for Modification of License

I

The Tennessee Valley Authority (licensee) is the holder of Facility Operating License No. DPR-68 which authorizes the operation of the Browns Fetty Nuclear Plant, Unit 3, at steady state reactor power levels not in excess of 3293 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Limestone County, Alabama.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-68 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–68 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to H. S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B, 33C Knoxville, Tennessee 37902, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation

[FR Doc. 80-35490 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346]

The Toledo Edison Co. and the Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Unit No. 1); Order for Modification of License

I

The Toledo Edison Company (TECo) and The Cleveland Electric Illuminating Company, (licensees) are the holders of Facility Operating License No. NPF–3, which authorizes the operation of the Davis-Besse Nuclear Power Station, Unit No. 1, at steady state reactor power levels not in excess of 2772 megawatts thermal (rated power). The facility consists of a presurized water reactor located at the licensees' site in Ottawa County, Ohio.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration On May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978, decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980, decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Evironmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progesss reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensees the requirement of the Commission's May 23, 1980, Memorandum and Order that by no later than June 30, 1982, all safety-related electrical equipment shall be

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. NPF–3 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualifications of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. NPF–3 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records shall be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensees or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw Pittman, Potts and Trowbrige, 1800 M Street NW, Washington, D.C. 20036, attorney for the licensees.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35491 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Plant); Order for Modification of License

I

The Vermont Yankee Nuclear Power Corporation (licensee) is the holder of Facility Operating License No. DPR–28 which authorizes the operation of the Vermont Yankee Nuclear Power Plant at steady state reactor power levels not in excess of 1593 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Windham County, Vermont.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978, decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980, decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588."

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Sepcifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission).

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980, Memorandum and Order that by no later than June 30, 1982, all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-realted electrical equipment to confrom to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, IT IS ORDERED THAT EFFECTIVE IMMEDIATELY Facility Operation License No. DPR–28 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–28 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to John A Ritsher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 01581, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1930, Bethesda, Maryland

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35402 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Virginia Electric and Power Co. (North Anna Power Station, Unit No. 1); Order for Modification of License

I

Virginia Electric and Power Company (licensee) is the holder of License No. NPF–4, which authorizes the operation of the North Anna Power Station Unit No. 1 at steady state reactor power levels not in excess of 2775 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site in Louisa County, Virginia.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on

Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980, Memorandum and Order that by no later than June 30, 1982, all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. NPF-4 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualifications of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. NPF-4 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG-0588. Thereafter, such records shall be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Michael W. Maupin, Esq., Hunton, Williams, Gay and Gibson, P.O. Box 1535, Richmond, Virginia 23212, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35493 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50-280]

Virginia Electric and Power Co. (Surry Power Station, Unit No. 1); Order for Modification of License

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License No. DPR-32, which authorizes the operation of the Surry Power Station, Unit No. 1 at steady state reactor power levels not in excess of 2441 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Surry County, Virginia.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operation reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—*the Division of Operating* Reactors "Guideliines for Evaluating *Environmental Qualification of Class* IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588."

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–32 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–32 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as

required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda. Md.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35494 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-281]

Virginia Electric and Power Co. (Surry Power Station, Unit No. 2); Order for Modification of License

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License No. DPR-37, which authorizes the operation of the Surry Power Station, Unit No. 2 at steady state reactor power levels not in excess of 2441 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Surry County, Virginia.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978, decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980, decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guildeines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progesss reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980, Memorandum and Order that by no later than June 30, 1982, all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-37 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualifications of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR-37 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG-0588. Thereafter, such records shall be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

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[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35495 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-266 and 50-301]

Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit Nos. 1 and 2); Order for Modification of Licenses

I

Wisconsin Electric Power Company (licensee) is the holder of License Nos. DPR-24 and DPR-27 which authorize the operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 1518 megawatts thermal (rated power). The facilities consist of two Pressurized Water Reactors located at the licensee's site at Two Creeks, Wisconsin.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progesss reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982, all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG-0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG-0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 3, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the

Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-24 and DPR-27 are hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualifications of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR-24 and DPR-27 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG-0588. Thereafter, such records shall be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Bruce Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35496 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-305]

Wisconsin Public Service Corp. et al. (Kewaunee Nuclear Plant); Order for Modification of License

I

Wisconsin Public Service Corporation, *et al.* (the licensee) is the holder of Facility Operating License No. DPR-43, which authorizes the operation of the Kewaunee Nuclear Plant at steady state reactor power levels not in excess of 1650 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensees's site Kewaunee County, Wisconsin.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978, decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980, decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Evironmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980 Memorandum and Order that by no later than June 30, 1982 all safety-related electrical equipment shall be

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–43 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines); or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–43 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditable records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing within 20 days of the date of publication of this Order in the Federal Register. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Foley and Lardner, First Wisconsin Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order.

Effective Date: October 24, 1980, Bethesda, Md.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35407 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Electric Company's Yankee Nuclear Power Station (Yankee Rowe); Order for Modification of License

I

Yankee Atomic Electric Company (the licensee) is the holder of Facility Operating License No. DPR–3, which authorizes the operation of Yankee Nuclear Power Station (Yankee Rowe) at steady-state reactor power levels not in excess of 600 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Franklin County, Rowe, Massachusetts.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 (copies attached) "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualifications of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

operating plants shall be qualified to the DOR Guidelines or NUREG–0588."

The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed that, "In order to leave no room for doubt on this issue, the staff is to prepare additional Technical Specifications for all operating plants which codify the documentation requirement paragraph of the Guidelines (paragraph 8.0)." The staff was directed to add these documentation requirements to each license after they were approved by the Commission.

The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The Commission has approved the Technical Specification provisions set forth in Section IV below which specify documentation requirements and which specifically impose on the licensee the requirement of the Commission's May 23, 1980, Memorandum and Order that by no later than June 30, 1982, all safety-related electrical equipment shall be qualified to the DOR Guidelines or NUREG–0588.

The information developed during the Commission review of the UCS Petition emphasizes the importance of prompt completion of the upgrading of environmental qualification of safety-related electrical equipment to conform to the DOR Guidelines or NUREG–0588 and of adequate documentation of equipment qualifications. The deadlines set forth in the Commission's Memorandum and Order dated May 23, 1980, assure that such upgrading will be accomplished promptly. In order to assure prompt completion of necessary qualification work or replacement of unqualified components, if necessary, in conformance with the requirements of the Commission's Memorandum and Order dated May 23, 1980, and to provide complete and adequate documentation as promptly as possible, such upgrading and documentation work must commence immediately. Therefore, I have concluded that the public health, safety and interest require this Order for Modification of License to be effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's Rules and Regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–3 is hereby amended to add the following provisions to the Appendix A Technical Specifications.

(a) "By no later than June 30, 1982, all safety-related electrical equipment in the facility shall be qualified in accordance with the provisions of: Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors" (DOR Guildelines); or, NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979. Copies of these documents are attached to Order for Modification of License No. DPR–3 dated October 24, 1980.

(b) "By no later than December 1, 1980, complete and auditible records must be available and maintained at a central location which describe the environmental qualification method used for all safety-related electrical equipment in sufficient detail to document the degree of compliance with the DOR Guidelines or NUREG–0588. Thereafter, such records should be updated and maintained current as equipment is replaced, further tested, or otherwise further qualified."

To effectuate the foregoing, appropriate pages for incorporation into the Technical Specifications are attached to this Order.

V

The licensee or any person whose interest may be affected by this Order may request a hearing on or before December 8, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reaction Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Frederic Greenmond, Esquire, New England Electric System, 20 Turnpike Road, Westborr, Massachusetts 01581, attorney for the licensee.

If a hearing is held concerning this Order, the issues to be considered at the hearing shall be:

a. whether the licensee should be required to have the environmental qualification records referred to in Section IV, above, available at a central location by no later than December 1, 1980; and

b. whether all safety-related electrical equipment should be qualified as required in Section IV, above, by no later than June 30, 1982.

Operation of the facility on terms consistent with this Order is not stayed by the pendency of any proceeding on the Order.

Effective Date: October 24, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 80-35498 Filed 11-17-80; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advanced Reactors will hold a meeting on December 2, 1980 at 8:30 a.m. in Room 1167, 1717 H St., NW, Washington, DC. The Subcommittee will review the current proposal for the NRC FY–82 Reactor Safety Research Budget in preparation for the ACRS Annual Report to Congress, and matters related to the establishment of quantitative safety criteria. Notice of this meeting was published October 24, 1980.

In accordance with the procedures outlined in the Federal Register on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions during which the Subcommittee finds it necessary to discuss the ACRS Annual Report to Congress on the NRC Reactor Safety Research Budget. One or more closed sessions may be necessary to discuss such information. (Sunshine Act Exemption (9)(B)). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Tuesday, December 2, 1980, 8:30 a.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Dr. Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EST.

The ACRS is required by Section 5 of the 1978 NRC Authorization Act to review the NRC Reactor Safety Research Program and Budget and to report the results of the review to Congress. In order to perform this review, the ACRS must be able to engage in frank discussions with members of the NRC Staff and such discussions would not be possible if held in public sessions. I have determined, therefore, in accordance with Subsection 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463), that, should such sessions be required, it is necessary to close portions of this meeting to prevent frustration of the above stated aspect of the ACRS' statutory responsibilities. The authority for such closure is 5 U.S.C. 552b(c)(9)(B).

Dated: November 12, 1980.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-35886 Filed 11-17-80, 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Procedures and Administration; Meeting

The ACRS Subcommittee on Procedures and Administration will hold a meeting on December 3, 1980 in Room 1010, 1717 H St., NW., Washington, DC.

In accordance with the procdures outlined in the Federal Register on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows: *Wednesday, December 3, 1980 4:30 p.m. until approximately 6:30 p.m.*

Members of the Subcommittee and the ACRS Staff, as well as any ACRS consultants who may be present, will discuss proposed procedures and guidelines for ACRS review of safety related standards and criteria consistent with the memo of understanding between EDO and ACRS regarding ACRS participation in the NRC rule making process and the Atomic Energy Act, Section 29.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Raymond F. Fraley (telephone 202/634–3265) between 8:15 a.m. and 5:00 p.m., EST.

Dated: November 13, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-35885 Filed 11-17-80, 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on the Reactor Operations; Meeting

The ACRS Subcommittee on the Reactor Operations will hold a meeting on December 2, 1980 in Room 1167, 1717 H St., NW., Washington, DC to review NRC guidelines for utility management structure and technical resources. Notice of this meeting was published October 24, 1980.

In accordance with the procedures outlined in the Federal Register on October 7, 1980, (44 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attandance except for those sessions during which the Subcommittee finds it necessary to discuss proprietary information. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTION 4). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows: *Tuesday, December 2, 1980 1:00 p.m. until the conclusion of business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Richard Major (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m. EST.

I have determined, in accordance with Subsection 10(d) of the Federal Advisory Committee Act, that it may be necessary to close some portions of this meeting to protect proprietary information. The authority for such closure is Exemption (4) to the Sunshine Act, 5 U.S.C. 552b(c)(4).

Dated: November 12, 1980.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-35884 Filed 11-17-80, 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Committee on Reliability and Probabilistic Assessment; Meeting

The ACRS Subcommittee on Reliability and Probabilistic Assessment will hold a meeting on December 3, 1980 in Room 1167, 1717 H St., NW, Washington, DC. The Subcommittee will review the NRC Safety Research Budget for FY–82 Decision Unit on Systems and Reliability Analysis (SARA), and will review related items on the use of risk assessment in the licensing process.

In accordance with the procedures outlined in the *Federal Register* on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance except for those sessions durng which the Subcommittee finds it necessary to discuss the ACRS Annual Report to Congress on the NRC Reactor Safety Research Budget. One or more closed sessions may be necessary to discuss such information. (SUNSHINE ACT EXEMPTION (9)(B)). To the extent practicable, these closed sessions will be held so as to minimize inconvenience to members of the public in attendance.

The agenda for subject meeting shall be as follows:

Wednesday, December 3, 1980; 8:30 a.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding mattrs to be considered durng the balance of the meetng.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons.

Further information about topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Gary Quittschreiber (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. EST.

The ACRS is required by Section 5 of the 1978 NRC Authorization Act to review the NRC Reactor Safety Research Program and Budget and to report the results of the review to Congress. In order to perform this review, the ACRS must be able to engage in frank discussions with members of the NRC Staff and such discussions would not be possible if held in public sessions. I have determined, therefore, in accordance with Subsection 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463), that, should such sessions be required, it is necessary to close portions of this meeting to prevent frustration of the above stated aspect of the ACRS' statutry responsibilities. The authority for such closure is 5 U.S.C. 552b(c)(9)(B).

Dated: November 12, 1980

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-35883 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses To Export/Import; Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission has received the following applications for export/import licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed within 30 days after publication of this notice in the Federal Register. Any request for hearing or petition for leave to intervene shall be served by the requester or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for license to export production or utilization facilities, special nuclear material or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported.

Dated this day November 12, 1980, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James R. Shea,

Director, Office of International Programs.

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End use	Country of destination
		Total element	Total isotope		
Combustion Eng., Oct. 9, 1980, Oct. 21, 1980 XSNM01753	3% enriched uranium	146,000	3,532	Initial cores for Taiwan Nuclear Units 7 and 8.	Taiwan.
Combustion Eng., Oct. 9, 1980, Oct. 21, 1980 XSNM01754	3.5% enriched uranium	150,000	5,250	Three reloads each for Taiwan Nuclear Units 7 and 8.	Taiwan.
Transnuclear, Oct. 24, 1980, Oct. 27, 1980 XSNM01755	3.35% enriched uranium	88,505.000	2,965.167	Multiple reloads for Stade Reactor.	West Germany.
Transnuclear, Oct. 24, 1980, Oct. 27, 1980 XSNM01756	3.4% enriched uranium	75,004.000	2,065.636	Multiple reloads for Wurgassen Reactor.	West Germany.
Transnuclear, Oct. 24, 1980, Oct. 27, 1980 XSNM01757	3.32% enriched uranium	34,901.000	1,159.033	Fuel for Unterweser Unit 1	West Germany.
Transnuclear, Oct. 24, 1980, Oct. 27, 1980 XSNM01758	3.4% enriched uranium	131,604.000	4,473.136	Multiple reloads for Unterweser	West Germany.
Mitsui and Co., Oct. 27, 1980, Oct. 29, 1980 XSNM01759	3.95% enriched uranium	5,429	146	Fuel for Fukuskima I Unit 5	Japan.
Edlow International, Oct. 27, 1980, Oct. 31, 1980 XSNM01760	3.15% enriched uranium	8,558	270	Routine reload for Genkai Unit 1	Japan.
Mitsui & Co., Oct. 29, 1980, Oct. 31, 1980 XSNM01761	3.95% enriched uranium	28,380	792	Reload fuel for Fukushima I, Unit 5.	Japan.

[FR Doc. 80-35890 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

Charter for Advisory Panel for the Decontamination of Three Mile Island, Unit 2

1. *Official Designation*
   Advisory Panel for the Decontamination of Three Mile Island, Unit 2
2. *Objectives and Scope of Activities and Duties*
   The Panel consults with and provides advice to the Commission on major activities required to decontaminate and safety clean-up the TMI-2 facility.
3. *Time Period*
   The Committee will be utilized during the period public views on clean-up issues at Three Mile Island are required
4. *Agency to whom the Panel Reports*
   United States Nuclear Regulatory Commission

5. *Agency Responsible for Providing Necessary Support*
United States Nuclear Regulatory Commission
6. *Duties*
As set forth in Item 2 above.
7. *Cost*
a. $10,000 (allowed expenses, including travel and per diem)
b. Less than one man-year.
8. *Estimated Number of Meetings Per Year*
Four meetings Per Year
9. *Termination Date*
Two Years from date of filing unless renewed in accordance with Section 14 of the Federal Advisory Committee Act
10. *Date of Filing*
November 10, 1980.

John C. Hoyle,
Advisory Committee, Management Officer.

[FR Doc. 80-3586 Filed 11-17-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-289]

Metropolitan Edison Co. et al.; Issuance of Amendment to Facility Operating License

The U.S Nuclear Regulatory Commission (the Commission) has issued Amendment No. 59 to Facility Operating License No. DPR-50, issued to Metropolitan Edison Company, Jersey Central Power and Light Company and Pennsylvania Electric Company (the licensees), which revised Technical Specifications for operation of the Three Mile Island Nuclear Station, Unit No. 1 (the facility) located in Dauphin County, Pennsylvania. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications for the facility by eliminating the present temporary requirements to perform periodic special inspection of the containment ring girder and allow future inspection of the ring girder to be performed in conjunction with the normal containment structural surveillance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated August 30, 1978, as revised March 31 and June 9, 1980, (2) Amendment No. 59 to License No. DPR-50, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the Government Publications Section, State Library of Pennsylvania, Box 1601 (Education Building), Harrisburg, Pennsylvania 17126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 31st day of October 1980.

For the Nuclear Regulatory Commission.

Robert W. Reid,
Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 80-35[illegible] Filed 11-17-80; 8:45 am]
BILLING CODE 7590-01-M

[Byproduct Material License No. 12-18044-01MD EA-80-33]

Nuclear Pharmacy, Inc.; Order Imposing Civil Monetary Penalties

I

Nuclear Pharmacy, Incorporated, 319 West Ontario Street, Chicago, Illinois 60610 (the "licensee") is the holder of Byproduct Material License No. 12-18044-01MD (the "license") issued by the Nuclear Regulatory Commission ("the Commission") which authorizes the licensee to process, mix or compound, and distribute prepared radiopharmaceuticals containing byproduct material to authorized recipients as well as produce technetium 99m pertechnetate and indium 113m chloride from generators. The license was issued on April 20, 1978, and will expire on April 30, 1983.

II

On January 22 and February 27, 28 and 29, 1980, an inspection was conducted of licensed activities under the license. As a result of this inspection it appears that the licensee has not conducted its activities in full compliance with the conditions of the license and with the requirements of the Nuclear Regulatory Commission's "Standards for Protection Against Radiation," Part 20, Title 10, Code of Federal Regulations. A written Notice of Violation was served upon the licensee by letter dated June 27, 1980, specifying the items of noncompliance in accordance with 10 CFR 2.201. A Notice of Proposed Imposition of Civil Penalties in the amount of Five Thousand Seven Hundred Dollars was served concurrently upon the licensee in accordance with Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282) and 10 CFR 2.205, incorporating by reference the Notice of Violation which stated the nature of the items of noncompliance, and the provisions of the NRC regulations and license conditions with which the licensee was in noncompliance. Answers from the licensee to the Notice of Violation and to the Notice of Proposed Imposition of Civil Penalties were dated July 22, 1980. Along with its response, the licensee paid the full civil penalty proposed for items 1, 3, 5, 6, 7 and 8, and one half the civil penalty proposed for item 4. The licensee denied item 2 and did not pay the proposed civil penalty for this item.

III

After consideration of the answers received and the statements of fact, explanation, and argument for mitigation or cancellation of items 2 and 4 of the Notice of Violation contained therein, as set forth in Appendix A to this Order, the Director of the Office of Inspection and Enforcement has determined that the full penalties proposed for items 2 and 4 in the Notice of Violation should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282) and 10 CFR 2.205, IT IS HEREBY ORDERED THAT:

The licensee pay civil penalties in the total amount of One Thousand Five Hundred Dollars within twenty-five days of the date of this Order, by check, draft, or money order payable to the Treasurer of the United States and mailed to the Director of the Office of Inspection and Enforcement.

V

The licensee may, within twenty-five days of the date of this Order, request a

hearing. A request for a hearing shall be addressed to the Secretary to the Commission, U.S.N.R.C., Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director, U.S.N.R.C., Washington, D.C. 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon failure of the licensee to request a hearing within twenty-five (25) days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment had not been made by that time, the matter may be referred to the Attorney General for collection.

VI

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) whether the licensee was in noncompliance with the Commission's requirements as set forth in items 2 and 4 of the Notice of Violation referenced in Sections II and III above; and,

(b) whether on the basis of such items of noncompliance, this Order should be sustained.

Dated at Bethesda, Maryland this 10th day of November 1980.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Director, Office of Inspection and Enforcement.

Appendix A—Evaluation and Conclusions

A Notice of Violation was issued to the licensee on June 27, 1980. That Notice identified four separate infractions and seven deficiencies resulting from noncompliance with various Commission requirements. The licensee admitted nine of the eleven alleged admitted items of noncompliance; it denied one alleged infraction (item 2) and while admitting another (item 4) requested mitigation of the civil penalty from $1,000 to $500.

For each contested item of noncompliance and associated civil penalty identified in the Notice of Violation (dated June 27, 1980), the original item of noncompliance is restated and the Office of Inspection and Enforcement's evaluation and conclusion regarding the licensee's response to each item (dated July 22, 1980) is presented.

Item 2—Statement of Noncompliance

10 CFR 20.101(a) limits the extremity dose of an individual in a restricted area to 18.75 rems per calendar quarter.

Contrary to the above, an individual working in the restricted area received an extremity dose of 21.8 rems during the 4th calendar quarter of 1979.

This is an infraction. (Civil Penalty—$1,000)

Evaluation Licensee Response

Although the licensee admits that an individual working in a restricted area received a dose in excess of that permitted by 10 CFR 20.101(a), it denies that it has committed any infraction of the regulations since the management of the licensee was not at fault in that it did not cause the overexposure of its employee. The licensee states that pursuant to the terms of the cited regulation, it has not committed an infraction unless the overexposure is caused by the licensee's negligence. The licensee also argues that the level of exposure to the individual involved may have been lower than the dosimetry reading reflected, because the individual used contaminated fingers to remove his ring badge. Finally, it argues that even if the exposure reading of 21.8 rems were correct (as compared to the dose limit in the regulation of 18.75 rems) the overexposure was not impermissible under 10 CFR 20.101(a) unless it was *caused* by the manner in which the licensee possessed, used or transferred the material.

These arguments of the licensee are not well taken for several reasons. First, we do not agree that the licensee had no role in causing the overexposure to the individual involved; the manner of the licensee's handling of material (through its employee) did cause the exposure. The basic elements of radiation protection involve time, distance, and shielding, all matters under the licensee's control. The licensee chose the type and quantity of isotopes to be used, established the procedures and selected the equipment to be used, and supervised the program. Further, the licensee could have prevented the overexposure by decreasing the exposure time. The inspection report shows that the licensee had not been keeeping a careful watch over dosimeter reports. In fact the licensee failed to develop procedures which would call for less exposure time, and safer handling of radioactive materials. This resulted in an employee receiving an overexposure.

The licensee does not claim that any other source of radiation caused the reading shown on the dosimeter; licensed material and no other radiation source caused an exposure to the hand of an individual in excess of the limits in 10 CFR 20.101(a).

Secondly, the licensee's characterization of the question involved as being whether it was negligent with regard to the overexposure incident is not correct. The Commission has already determined *In the Matter of Atlantic Research Corporation*, CLI-80-7, 11 NRC 413 (1980), that its authority to impose civil penalties upon a licensee pursuant to section 234 of the Atomic Energy Act is not limited to situations in which management negligence contributed to the license violation.

As in *Atlantic Research*, the licensee's argument here amounts to an assertion that it should not be penalized because no specific action by its management caused the commission of the infraction for which it has been cited. The Commission emphatically rejected that line of reasoning in *Atlantic Research:*

"Under that approach, the responsibility for infractions of license provisions or Commission regulations would be divided between the licensee's management and its employees. We believe that this would be an unsound enforcement policy because management's freedom from culpability could be interpreted as freedom from responsibility. In the worst case, this might lead to a situation where a licensee may choose a course which minimizes the potential for culpability even though some alternative would better protect public health and safety. We find that such a division of responsibility between a licensee and its employees has no place in the NRC regulatory regime which is designed to implement our obligation to provide adequate protection to the health and safety of the public in the commercial nuclear field. *In general, we believe a strong enforcement policy dictates that the licensee be held accountable for all violations committed by its employees in the conduct of the licensed activity.*" 11 NRC at 421-22. (Emphasis added.)

The Commision emphasized in that decision that as long as (1) a violation has been established (2) the proposed civil penalty may positively affect the conduct either of the licensee or any other person and (3) the civil penalty is not grossly disproportionate to the gravity of the offense, the Commission has discretion to impose the civil penalty as a sanction for the infraction or violation. 11 NRC at 420-421. Thus, regardless of whether NPI caused the overexposure incident or was negligent in failing to prevent it, there is no question that it should be held accountable for this infraction and that the three prerequisites for imposition of a civil penalty are present.

With regard to the licensee's argument that the amount of the overexposure is not impermissible pursuant to 10 CFR 20.101(a) unless it *caused* the overexposure, that regulation imposes an absolute limit on exposures; exceeding the dose limit is flatly prohibited. In addition, 10 CFR 20.1(b) clearly states that the purpose of Part 20

is to control the use of licensed material by any licensee in such a manner that the total dose to any individual does not exceed the standards of radiation protection prescribed in the pertinent regulations. Further, with regard to the argument made by the licensee that the level of exposure to the individual may have been lower than the dosimetry reading, the inspection report indicates that although contamination may have caused some exposure of the badge, exposure from contamination would only be about 130 millirems of the 21,821 millirems recorded by the badge. Further, the inspection report showed that extremity exposures for individuals working in this facility could be high.

Finally, we note the licensee's description of the action taken after the overexposure and its report that this action has reduced exposures since the incident in question. Corrective action is always required; however, we believe that this action could have been taken prior to the time of the overexposure to minimize the possibility of its occurrence.

Conclusion

The licensee does not contest the fact that the overexposure noted in the Notice of Violation occurred. The information presented by the licensee does not provide a basis for modification of this enforcement action. This item as stated in the Notice of Violation is an item of noncompliance.

Item 4—Statement of Noncompliance

10 CFR 20.201(b) requires each licensee to make or cause to be made such surveys as may be necessary for him to comply with the regulations in this part. 10 CFR 20.106 limits the amount of licensed material that can be released to the unrestricted area.

Contrary to the above, during 1979 and as of February 29, 1980, the lincensee had not made surveys to determine that the concentrations of iodine 131 released in airborne effluents from fume hoods in its facilities were within the limits set forth in 10 CFR 20.

This is an infraction. (Civil Penalty—$1,000)

Evaluation of Licensee Response

The licensee admits that its failure to conduct the required surveys constitutes an item of noncompliance. Its request for mitigation of the civil penalty is based upon the fact that at the time of the February 1980 NRC inspection, the equipment necessary to perform the surveys had been installed and the initial air sampling counts had already been taken. Although these counts had been taken, the licensee candidly states that the equipment had not been calibrated and the data not evaluated to indicate how many counts constitute a microcurie or how many cc's of air passed through the filter during the sampling time. However, the licensee argues that the number of counts in the air samples was so low that it can be clearly concluded that releases of radioactive effluents were within acceptable limits. Finally, the licensee states that properly evaluated air sampling surveys are currently performed every week, and that it is now in full compliance with 10 CFR 20.201(b).

The licensee has previously been cited for the identical item of noncompliance in a Notice of Violation dated April 5, 1979, arising from inspections performed by the NRC regional office on January 31 and February 2, 1979. In particular, item 5 of that Notice of Violation specified the following:

> 10 CFR 20.201(b), "Surveys," requires you to make such surveys as may be necessary for you to comply with all sections of Part 20.
>
> Contrary to this requirement, as of the date of this inspection, you failed to make such surveys as were necessary to assure compliance with 10 CFR 20.106, "Concentrations in effluents to unrestricted areas," a regulation that limits the yearly average concentration of iodine and xenon contained in the air discharged to the unrestricted area. Specifically, no evaluations were made of the concentration of iodine discharged from your Elmhurst facility.

In response to that Notice of Violation, the licensee stated, in an undated letter received by the NRC regional office on April 25, 1979, that:

> In regard to Item 5, the fume hood exhaust in our facilities are forced through a trap consisting of a filter/activated charcoal system prior to venting to an unrestricted area. The efficiency of the trapping system will be periodically evaluated by taking the wipe tests before and after the trapping device. From this data, the efficiency of the trap will be determined, and together with the activity utilized, an estimate of the radioactive release will be determined. The wipe tests will be performed on a monthly basis to constantly assess the trapping efficiency.

Further, the licensee stated that all items of noncompliance had been corrected and that the procedures had been or would be initiated by May 1, 1979. Thus, notwithstanding the licensee's observation in response to the current (June 27, 1980) Notice of Violation that it had installed the appropriate equipment for air surveys and taken initial sampling counts by the time of the February, 1980 inspection, the fact is that the equipment could have and should have been installed shortly after the April 5, 1979 Notice of Violation had been issued. Indeed, given the licensee' statement (in its undated April 1979 response to the first citation) that it had corrected the items of noncompliance and that the necessary procedures would be initiated by May 1, 1979, its argument for mitigation of the currently assessed civil penalty is particularly unpersuasive.

The licensee also requests mitigation based upon its conclusion that the number of counts in the air samples was so low that effluent releases could clearly be concluded to be within acceptable limits. However, based upon NRC regional office experience with other licensees who used similar amounts of iodine-131 and the frequency with which the licensee used liquid iodine-131 (about twice per month), the 10 CFR Section 20.106 limit could be exceeded under circumstances such as a spill in the hood or the receipt of an iodine-131 dose lacking the proper buffer to keep the iodine in solution.

Conclusion

The licensee does not contest the fact that it has committed an infraction. The information presented by the licensee, especially in view of the repetitive nature of the current citation, does not provide a basis for modification of this enforcement action. This item as stated in the Notice of Violation is an item of noncompliance.

[FR Doc. 80-35886 Filed 11-17-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-271]

Vermont Yankee Nuclear Power Corp.; Issuance of Amendment To Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 59 to Facility Operating License No. DPR-28 issued to Vermont Yankee Nuclear Power Corporation which revises the Technical Specifications for operation of the Vermont Yankee Nuclear Power Station located in Windham County, Vermont. The amendment is effective as of the date of its issuance.

This amendment changes the Technical Specifications to allow the count rate in the Source Range Monitor channels to drop below 3 counts per second when the entire core is being removed or replaced.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate

findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated November 6, 1980, (2) Amendment No. 59 to License No. DPR-28, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland this 10th day of November 1980.

For the Nuclear Regulatory Commission.

Thomas A. Ippolito,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 80-35891 Filed 11-17-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Advisory Committee on Weather Modification; Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), it is hereby determined that the establishment of the Advisory Committee on Weather Modification is necessary, appropriate, and in the public interest in connection with the performance of the duties imposed upon the Director, Office of Science and Technology Policy (OSTP) by the National Science and Technology Policy, Organization, and Priorities Act of 1976. This determination follows consultation with the Office of Management and Budget (OMB), pursuant to section 9(1)(2) of the Federal Advisory Committee Act and OMB Circular No. A-63, Revised.

1. *Name of Group.* Advisory Committee on Weather Modification.

2. *Purpose.* In late 1979, the Secretary of Commerce delivered to the President and the Congress a report on national weather modification programs and policies pursuant to the National Weather Modification Policy Act of 1976. The report indicates that well-coordinated research and development programs carried out by a number of Federal agencies can contribute to advances in weather modification science and technology. A Weather Modification Subcommittee under the Committee on Atmospheres and Oceans, Federal Coordinating Council for Science, Engineering, and Technology, has been established to ensure that Federal research is carried out in the context of a coherent, long-term research plan. The Advisory Committee being established will ensure close public scrutiny and involvement in the planning and conduct of the Federal Program, including the Weather Modification Subcommittee, as it is carried forward.

3. *Effective date of Establishment and Duration.* The establishment of the Advisory Committee on Weather Modification is effective upon filing of the charter with the Director, Office of Science and Technology Policy, and with the standing committees of Congress having legislative jurisdiction over the Office of Science and Technology Policy. The Advisory Committee on Weather Modification will continue two calendar years from the effective date.

4. *Membership.* The Advisory Committee on Weather Modification will be composed of not more than 11 members and not less than seven, appointed by the Director. The members shall possess experience or current interest in weather modification or related aspects such as: research, agriculture, water resources, public policy or environmental impact. Members shall be appointed for up to two years and will serve at the discretion of the Director. Appointments to fill vacancies shall be for the remainder of the unexpired term of the vacancy.

5. *Advisory Group Operation.* The Advisory Committee on Weather Modification will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), OSTP policy and procedures, OMB Circular No. A-63, Revised, and other directives and instructions issued in implementation of the Act.

Frank Press,

Director.

[FR Doc. 80-35835 Filed 11-17-80; 8:45 am]

BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 11437; 812-4719]

Beneficial National Life Insurance Co. and the Dreyfus Rainbow Annuity Variable Account A, and MoneyMart Assets, Inc.; Filing of an Application To Amend an Order of Exemption Granted Pursuant to Section 11 of the Act Approving Certain Offers of Exchange

November 10, 1980.

Notice is hereby given that Beneficial National Life Insurance Company (the "Company") Two Park Avenue, New York, NY 10016, a stock life insurance company incorporated under the laws of the State of New York, the Dreyfus Rainbow Annuity Variable Account A (the "Variable Account"), a separate account of the Company established under New York Insurance Law and registered as a unit investment trust under the Investment Company Act of 1940 (the "Act"), and MoneyMart Assets Inc.; (the "Fund") MoneyMart Assets, Inc.; 100 Gold Street, New York, NY 10038, a Maryland corporation registered as an open-end diversified management investment company under the Act (hereinafter collectively referred to as the "Applicants") filed an application on August 5, 1980 requesting an order of the Commission amending a prior order of the Commission dated May 19, 1980 (Investment Company Act Release No. 11173), as amended August 27, 1980 (Investment Company Act Release No. 11317), exempting Applicants from the provisions of Section 11(c) of the Act to the extent necessary to permit the Applicants to offer shareholders of the Fund the option to exchange their shares for Individual Single Purchase Payment Variable Annuity Contracts (the "Contracts") offered by the Company. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

Applicants state that Continental Illinois National Bank and Trust Company of Chicago ("Continental") serves as the Fund's investment advisor. For its services, Continental is paid a monthly fee at an annual rate of .25 of

1% of the average value of the Fund's assets during the preceding month up to $50,000,000, .20 of 1% from $50,000,000 up to $200,000,000, .15 of 1% from $200,000,000 to $1,000,000, and .10 of 1% of the average value of the Fund's assets in excess of $1,000,000,000. As of July 15, 1980, the Fund's assets were $1,755,784,150.10. Bache Halsey Stuart Shields Incorporated ("Bache") serves as the Fund's administrator and distributor and bears certain costs of the operations of the Fund. It is paid a monthly fee at an annual rate of .25 of 1% of the average value of the Fund's net assets in excess of $50,000,000 and .20 of 1% of the Fund's assets in excess of $50,000,000 during the preceding month. State Street Bank and Trust Company is custodian of the Fund's investments and its transfer and dividend disbursing agent.

According to the application, the Applicants propose to permit shareholders of the Fund to exchange their shares for the Contracts. Such shareholders will be notified of the offer of exchange and will be permitted to make such an exchange without payment of a fee, sales load, transfer charge or administrative charge. Purchase payments for the Contracts in the form of shares of the Fund to be exchanged will be allocated to the Variable Account and will be invested by the Variable Account in shares of the Fund.

The Applicants state that the Contracts will be sold by licensed insurance agents in those states where the Contracts may be lawfully sold. Such agents will be registered representatives or broker-dealers registered under the Securities Exchange Act of 1934 which are members of the National Association of Securities Dealers, Inc. The Contracts will be distributed through Dreyfus Service Organization, Inc. ("DSO") and Bache. The Applicants further state that the Company has agreed to pay insurance commissions to DSO for its services as an insurance general agent in distributing the Contracts. DSO may have subagents to whom it may pay a portion of its commission. In the case of Contracts under which the Fund will be the underlying investment medium, Bache will be such a subagent.

Section 11(c) of the Act prohibits offers to exchange securities of an open-end investment company for securities of a unit investment trust. The Applicants submit that they are therefore prohibited from offering shareholders of the Fund, an open-end investment company, the opportunity to exchange their shares for securities of the Variable Account, a unit investment trust, absent an exemptive order by the Commission.

In support of the relief requested, the Applicants state their belief that the Contracts can provide valuable features for retirement and financial planning for the existing shareholders of the Fund. The Contracts provide the facility for Contract Owners to provide for lifetime retirement income. The Contracts may also enable Contract Owners to defer current income taxes on investment income attributable to the Contracts. Existing shareholders of the Fund will therefore be afforded benefits which they do not now possess if they avail themselves of the exchange offer.

The Applicants further state that the proposed exchange of securities of the Fund for the Contracts is accomplished at net asset value without assessment of any fee or charge in connection with such exchange. The proposed exchange is entirely voluntary and is solely at the election of existing shareholders of the Fund. The Contracts can be acquired by such an exchange on a basis which permits existing Fund shareholders to add annuity features to their financial plans while retaining the investment orientation which they already possess.

According to the application, in no event will solicitation of existing Fund shareholders be made until such shareholders have been provided with a currently effective prospectus for the Contracts and for the Fund. The Applicants submit that this will enable such shareholders to evaluate the appropriateness of any such exchange.

For the reasons stated in their application, the Applicants submit that the requested exemption from the provisions of Section 11(c) of the Act is appropriate and in the public interest, is consistent with the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than December 5, 1980 at 5:30 p m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his or her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or that person may request notification if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said December 5, 1980 unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-35835 Filed 11-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21782; 70-6206]

Central and South West Corp.; Proposed Increase in Number of Shares of Holding Company's Common Stock To Be Issued and Sold Pursuant to Employees' Thrift Plan

November 12, 1980.

Notice is hereby given that Central and South West Corporation ("CSW"), 2700 One Main Place, Dallas, Texas 75250, a registered holding company, has filed with this Commission a post-effective amendment to its application-declaration previously filed pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a) and 7 of the Act and Rule 50(a)(5) promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

By order dated October 24, 1978 (HCAR No. 20742), CSW was authorized to issue and sell up to 1,000,000 shares of its authorized but unissued common stock par value $3.50 per share, pursuant to a CSW Employees' Thrift Plan ("Plan"). The Plan provides a means by which eligible employees of CSW and its direct and indirect subsidiaries, Central Power and Light Company, Central and South West Fuels, Inc., Central and South West Services, Inc., Public Service Company of Oklahoma, Transok Pipeline Company, Southwestern Electric Power Company and West Texas Utilities Company (together, "CSW Subsidiaries"), may

maintain a regular savings program and to provide additional benefits for such employees upon retirement. Under the Plan, the participating employers, i.e., the CSW Subsidiaries, make contributions of cash monthly, out of net income in an amount equal to 50 percent of the basic deposit made by each employee with less than 20 years of service and 75 percent of the basic deposit for those employees with 20 years of service or more.

The Plan permits each participating employee to make monthly payments to his Plan account in an amount equal to 2 percent, 4 percent or 6 percent of his annual salary, and to make additional deposits in amount not to exceed 4 percent of his annual salary for each year of service since he became a participant in the Plan. The deposits by participating employees and the corresponding contributions by employers are paid monthly to the Trustee under the Plan, the First National Bank in Dallas, for investment.

The Trustee, pursuant to written direction from each participating employee, invests funds held in each such employee's Plan account under either of two investment options. Under the first option, the Trustee invests a participant's funds in the common stock of CSW (up to 5 percent of the total number of CSW shares at that time outstanding), the Trustee purchasing such shares from CSW at the average of the closing prices for CSW common stock as reported on the New York Stock Exchange composite for the 20 consecutive trading days ending with the last trading day of the month with respect to which the employer contributions and employee basic deposits being invested were made. Under the second option, the Trustee invests a participant's funds in an unsegregated fund managed under contract with the Equitable Life Assurance Society of the United States, which fund is principally invested in mortgages and debt securities and the return on which is quaranteed by Equitable.

By post-executive amendment CSW requests an increase from 1,000,000 to 4,000,000 in the number of authorized but unissued shares of its common stock that may be issued and sold pursuant to the Plan. It is stated that through September 30, 1980, CSW had issued and sold 751,791 such shares pursuant to the Plan, and that it is presently anticipated that an additional 3,033,000 shares (assuming a price per CSW share of $13.50) would have to be issued between October 1, 1980, and December 31, 1985, to meet the projected demand for such shares under the Plan. It is stated that CSW will apply the proceeds from the sale of such shares through loan or equity contributions to its subsidiaries (which contributions will be the subject of future filings with this Commission) for use in their ongoing construction programs.

CSW requests an exception from the competitive bidding requirements of Rule 50 under the Act for the proposed issuance and sale of the additional shares under the Plan pursuant to Rule 50(a)(5).

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $600. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than December 8, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant-declarant at the above-stated address, and proof of service (by affidavit or, in case of an attorney-at-law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notice and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulations, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-35938 Filed 11-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 17286; SR-PSE-80-17]

Pacific Stock Exchange Inc.; Order Approving Proposed Rule Change

November 12, 1980.

On September 29, 1980, the Pacific Stock Exchange Incorporated, 301 Pine Street, San Francisco, California 90014 filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which sets forth acceptable methods of allocating options exercise notices among options trading accounts at member organizations.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-17179, September 30, 1980) and by publication in the Federal Register (45 FR 66932, October 8, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(1) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzimmons,

Secretary.

[FR Doc. 80-35937 Filed 11-17-80; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 17287; SR-Phlx-80-22]

Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

November 12, 1980.

On September 16, 1980, the Philadelphia Stock Exchange, Inc. ("Phlx"), 17th Street & Stock Exchange Place, Philadelphia, Pennsylvania 19103 filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which permits members to execute transactions in Phlx options as principals in the over-the-counter market for a premium not in excess of $1 per contract.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34–17188, October 2, 1980) and by publication in the Federal Register (45 FR 67180, October 9, 1980). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(1) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-35938 Filed 11-17-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

National Advisory Council Meeting

The Small Business Administration National Advisory Council will hold a public meeting from 3:00 p.m., Tuesday, December, 9, 1980 to 12:30 p.m., Friday, December 12, 1980, at the Hollywood Beach Holiday Inn Resort, 4000 South Ocean Drive, Hollywood Beach, Florida, to discuss such business as may be presented by members, the staff of the U.S. Small Business Administration, and others attending.

For further information, write or call Michael B. Kraft, Director, Office of Advisory Councils, U.S. Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416—(202) 653–6748.

Dated: November 7, 1980.

Michael B. Kraft,

Director, Office of Advisory Councils.

[FR Doc. 80-35851 Filed 11-17-80; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 224
Tuesday, November 18, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COPYRIGHT ROYALTY TRIBUNAL.

DATE AND TIME: 10 a.m., Tuesday, November 25, 1980.

PLACE: 2359 Rayburn House Office Building.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Possible declaration of controversy concerning distribution of 1979 jukebox royalty fees.
2. Possible declaration of controversy concerning distribution of 1979 cable royalty fees.
3. Petition For Reconsideration of the Motion Picture Association and other program syndicators of the Tribunal's notice published in the Federal Register of October 29, 1980 (45 FR 71641) concerning distribution of 1978 cable royalty fees.

CONTACT PERSON FOR MORE INFORMATION: Mary Lou Burg, Chairman; Copyright Royalty Tribunal; Phone (202) 653-5175.

Mary Lou Burg,
Chairman.

[S-2100-80 Filed 11-14-80; 3:30 p.m.]
BILLING CODE 1410-01-M

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[USITC SE-80-53A]

INTERNATIONAL TRADE COMMISSION.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 73217, (November 11, 1980).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Monday, November 17, 1980.

CHANGES IN THE MEETING: In deliberations held Thursday, November 13, 1980, the United States International Trade Commission, in conformity with 19 CFR 201.37, voted that Commission business requires that the meeting previously scheduled to be held Monday, November 17, 1980, be cancelled.

Commissioners Alberger, Calhoun, Moore, Bedell, and Stern determined by unanimous consent that Commission business requires the cancellation of the meeting announced for Monday, November 17, 1980, affirmed that no earlier announcement of the change was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-2097-80 Filed 11-14-80; 10:59 am]
BILLING CODE 7020-02-M

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[USITC SE-80-55]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, November 26, 1980.

PLACE: Room 117, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
   a. Trunnion seals (Docket No. 693).
   b. Wood burning stoves (Docket No. 688).
5. Leather wearing apparel from Uruguay (Inv. 731-TA-68)—briefing and vote.
6. Slide fasteners (Inv. 337-TA-85)—reopening of vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-2095-80 Filed 11-17-80; 10:58 am]
BILLING CODE 7020-02-M

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[USITC ERB-80-12]

INTERNATIONAL TRADE COMMISSION.

Executive Resources Board (ERB)

TIME AND DATE: 10 a.m., Monday, November 24, 1980.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED: Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(2) and (6), on the authority of 19 U.S.C. 1335, and in conformity with 19 CFR 201.36(b) (2) and (6), Commissioners Calhoun, Bedell, and Stern, as members of the Executive Resources Board (ERB), voted to hold a meeting of the Board in closed session as follows:

1. Old Business.
   a. Executive Development.
   b. SES Manpower Planning.

A majority of the entire membership of the Board felt that this meeting should be closed to the public since: (1) the discussion would only concern internal personnel practice and procedures; and (2) the information discussed would be likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0616.

[S-2096-80 Filed 11-14-80; 10:39 am]
BILLING CODE 7020-02-M

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[NM-80-38]

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9 a.m., Tuesday, November 25, 1980.

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: The first four items will be open to the public; the fifth item will be closed to the public under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*—Kennedy Flite Center, Gates Learjet Model 23, Richmond, Virginia, May 6, 1980.
2. *Safety Effectiveness Evaluation* of Rail Rapid Transit Safety.
3. *Aircraft Accident Report*—Air Canada McDonald Douglas DC-9-32 (CF-TLU), East of Boston, Massachusetts, September 17, 1979.
4. *Letter* to Semmes, Bowen, and Semmes re reconsideration of Marine Accident Report—Collision of U.S. Coast Guard Cutter Blackthorn and U.S. Tankship Capricorn, Tampa Bay, Florida, January 28, 1980.

5. *Opinion and Order*—Petition of Jensen, Docket SM–2523; disposition of Administrator's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, 202–472–6022.

November 14, 1980.

[S–2099–80 Filed 11–14–80; 3:19 pm]

BILLING CODE 4910–58–M

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NUCLEAR REGULATORY COMMISSION.

DATE: November 20 and 21, 1980.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

Thursday, November 20:

4 p.m.

Discussion of Management-Organization and Internal Personnel Matters (approximately 1 hour, closed—Exemptions 2, 6).

Friday, November 21:

11 a.m.

Affirmation or Discussion and Vote (approximately 1 hour, public meeting).

a. Narrative Explanation of S–3 Table.
b. Reporting of Physical Security Events.
c. EDO Delegation of Authority.
d. Proposed Rulemaking—Post CP Design Changes.

2 p.m.

Briefing on Radiation Health Effects and Radiation Research (approximately 2 hours, public meeting).

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

[S–2098–80 Filed 11–14–80; 3:10 pm]

BILLING CODE 7590–01–M

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[1P0401]

PAROLE COMMISSION.

National Commissioners (the Commissioners presently maintaining office at Washington, D.C. Headquarters)

TIMED AND DATE: 9:30 a.m., Friday, November 14, 1980.

PLACE: Room 724, 320 First Street NW., Washington, D.C. 20537.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 7 cases in which inmates of federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE INFORMATION: Linda W. Marble, Chief Case Analyst, National Appeals Board, U.S. Parole Commission (202) 724–3094.

[S–2094–80 Filed 11–14–80; 10:30 a m]

BILLING CODE 4410–01–M

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SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 74142, November 7, 1980.

STATUS: Closed/open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, November 4, 1980/Monday, November 10, 1980.

CHANGES IN THE MEETING: Deletions. The following item was not considered at a closed meeting scheduled for Wednesday, November 12, 1980, at 2:30 p.m.

Freedom of Information Act appeal.

The following item was not considered at an open meeting scheduled for Thursday, November 13, 1980, at 10 a.m.:

Consideration of whether to send a letter to Congressman John D. Dingell, Chairman of the Subcommittee on Energy and Power of the House Committee on Interstate and Foreign Commerce which addresses various concerns which the Commission has with a provision in H R. 8157, the "Pacific Northwest Electric Power Planning and Conservation Act," which would provide an exemption from the Public Utility Holding Company Act of 1935. For further information, please contact Andy MacDonald at (202) 272–2427.

Commissioners Loomis, Evans, and Thomas determined that Commission business required the above changes and that no earlier notice thereof possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Wojtas at (202) 272–2178.

November 13, 1980.

[S–2095–80 Filed 11–14–80; 10:29 am]

BILLING CODE 8010–01–M

Federal Register

Tuesday
November 18, 1980

Part II

Environmental Protection Agency

National Emission Standards for Hazardous Air Pollutants

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AP-FRL 1563-1]

National Emission Standards for Hazardous Air Pollutants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 7, 1977 (42 FR 29005) the Administrator promulgated amendments to the national emission standards for the hazardous air pollutant vinyl chloride. The Administrator also promulgated amendments to Appendix B—Test Methods, of this part. Since the promulgation of Method 106—Determination of Vinyl Chloride from Stationary Sources and Method 107 Determination of Vinyl Chloride Content of Inprocess Wastewater Samples and Vinyl Chloride Content of Polyvinyl Chloride Resin, Slurry, Wet Cake, and Latex Samples, several improvements in the methods have been developed. These revisions incorporate those improvements.

DATES: Comments must be received by January 19, 1981.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket No. A-80-50, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Roger Shigehara, Emission Measurement Branch (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711; telephone number (919) 541-2237

SUPPLEMENTARY INFORMATION: These revised procedures differ from the previous methods as follows: Method 106—(1) sample bag size can range from 50 to 100 liters rather than the single size bag previously required, and (2) analysis audit and chromatograph with resolution quality assurance requirements are added. These requirements are contained in Appendix C, 40 CFR Part 61, as proposed with the National Emission Standard for Benzene Emissions from Maleic Anhydride Plants (45 FR 26660). Method 107—(1) a head space vial pre-pressurizer is added to obtain correct head space gas equilibrium, (2) different chromatograph columns are suggested for analysis, and (3) chromatorgraph resolution quality assurance requirements are added.

The Administrator finds that notice and public procedure is unnecessary because the revisions are minor and technical. These revisions are issued under the authority of Section 114 of the Clean Air Act as amended (42 U.S.C. 7414)

Dated: November 10, 1980.

Douglas Costle,

Administrator

40 CFR Part 61 is amended by revising Test Methods 106 and 107 of Appendix B to read as follows:

Appendix B—Test Methods

* * * * *

Method 106—Determination of Vinyl Chloride From Stationary Sources

Introduction [1]

Performance of this method should not be attempted by persons unfamiliar with the operation of a gas chromatograph, nor by those who are unfamiliar with source sampling, because knowledge beyond the scope of this presentation is required. Care must be exercised to prevent exposure of sampling personnel to vinyl chloride, a carcinogen.

1. *Applicability and Principle.*

1.1 Applicability. The method is applicable to the measurement of vinyl chloride in stack gases from ethylene dichloride, vinyl chloride, and polyvinyl chloride manufacturing processes. The method does not measure vinyl chloride contained in particulate matter.

1.2 Principle. An integrated bag sample of stack gas containing vinyl chloride (chloroethene) is subjected to gas chromatographic (GC) analysis using a flame ionization detector (FID).

2. *Range and Sensitivity.*

This method is designed for the 0.1 to 50 ppm range. However, common GC instruments are capable of detecting 0.02 ppm vinyl chloride. With proper calibration, the upper limit may be extended as needed.

3. *Interferences.*

The chromatographic columns and the corresponding operating parameters herein described normally provide an adequate resolution of vinyl chloride; however, resolution interferences may be encountered on some sources. Therefore, the chromatograph operator shall select the column and operating parameters best suited to his particular analysis requirements, subject to the approval of the Administrator. Approval is automatic, provided that the tester produces confirming data through an adequate supplemental analytical technique, such as analysis with a different column or GC/mass spectroscopy, and has the data available for review by the Administrator.

4. *Apparatus.*

4.1 Sampling (see Figure 106-1). The sampling train consists of the following components:

4.1.1 Probe. Stainless steel, Pyrex glass, or Teflon tubing (as stack temperature permits) equipped with a glass wool plug to remove particulate matter.

4.1.2 Sample Lines. Teflon, 6.4-mm outside diameter, of sufficient length to connect probe to bag. Use a new unused piece for each series of bag samples that constitutes an emission test, and discard upon completion of the test.

4.1.3 Quick Connects. Stainless steel, male (2) and female (2), with ball checks (one pair without), located as shown in Figure 106-1.

4.1.4 Tedlar Bags. 50- to 100-liter capacity, to contain sample. Aluminized Mylar bags may be used if the samples are analyzed within 24 hours of collection.

BILLING CODE 6560-25-M

[1] Mention of any trade or specific product does not constitute endorsement by the U.S. Environmenal Protection Agency.

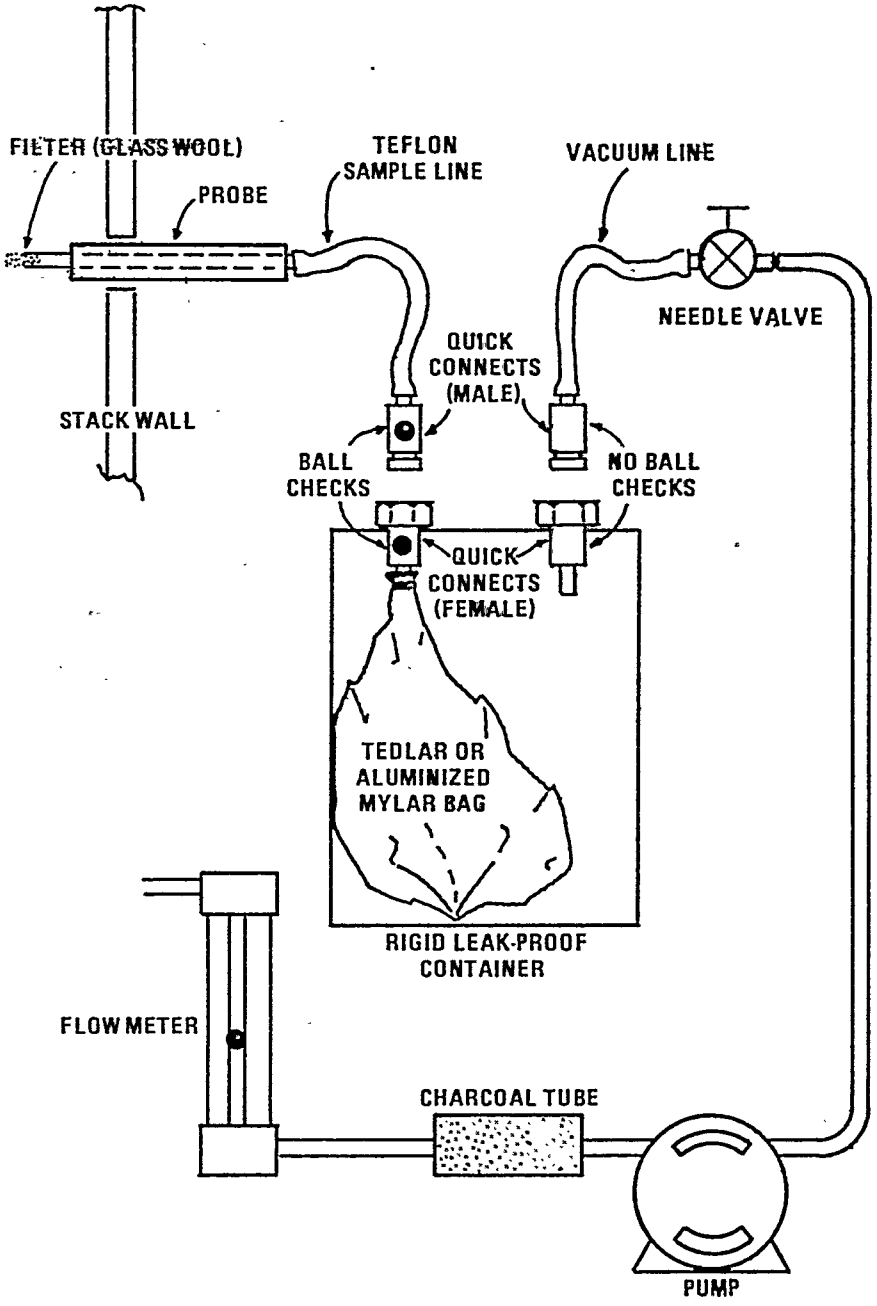


Figure 106-1. Integrated-bag sampling train. (Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.)

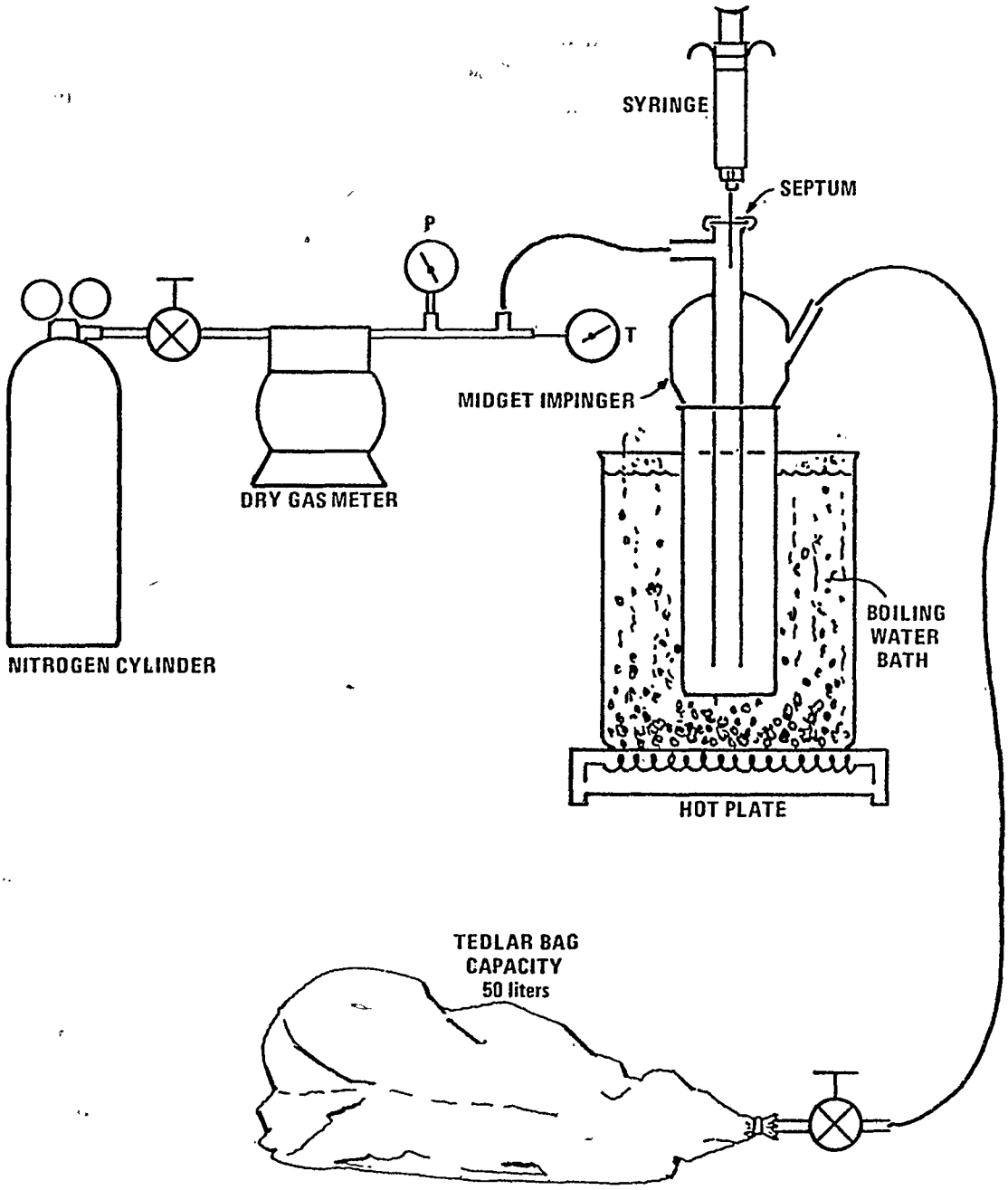


Figure 106-2. Preparation of standards (optional).

BILLING CODE 6560-26-C

4.1.5 Bag Containers. Rigid leakproof containers for sample bags, with covering to protect contents from sunlight.

4.1.6 Needle Valve. To adjust sample flow rates.

4.1.7 Pump. Leak-free, with minimum of 2-liter/min capacity.

4.1.8 Charcoal Tube. To prevent admission of vinyl chloride, and other organics to the atmosphere in the vicinity of samplers.

4.1.9 Flow Meter. For observing sampling flow rate; capable of measuring a flow range from 0.10 to 1.00 liter/min.

4.1.10 Connecting Tubing. Teflon, 6.4-mm outside diameter, to assemble sampling train (Figure 106-1).

4.2 Sample Recovery. Teflon tubing, 6.4-mm outside diameter, to connect bag to gas chromatograph sample loop for sample recovery. Use a new unused piece for each series of bag samples that constitutes an emission test, and discard upon conclusion of analysis of those bags.

4.3 Analysis. The following equipment is required:

4.3.1 Gas Chromatograph. With FID, potentiometric strip chart recorder and 1.0- to 5.0-ml heated sampling loop in automatic sample valve. The chromatographic system shall be capable of producing a response to 0.1-ppm vinyl chloride that is at least as great as the average noise level. (Response is measured from the average value of the base line to the maximum of the waveform, while standard operating conditions are in use.)

4.3.2 Chromatographic Columns. Columns as listed below. The analyst may use other columns provided that the precision and accuracy of the analysis of vinyl chloride standards are not impaired and he has available for review information confirming that there is adequate resolution of the vinyl chloride peak. (Adequate resolution is defined as an area overlap of not more than 10 percent of the vinyl chloride peak by an interferent peak. Calculation of area overlap is explained in Appendix C, Supplement A: "Determination of Adequate Chromatographic Peak Resolution.")

4.3.2.1 Column A. Stainless steel, 2.0 m by 3.2 mm, containing 80/100-mesh Chromasorb 102.

4.3.2.2 Column B. Stainless steel, 2.0 m by 3.2 mm, containing 20 percent GE SF-96 on 60/80-mesh Chromasorb P AW; or stainless steel, 1.0 m by 3.2 mm containing 80/100-mesh Porapak T. Column B is required as a secondary column if acetaldehyde is present. If used, column B is placed after column A. The combined columns should be operated at 120°C.

4.3.3 Flow Meters (2). Rotameter type, 100-ml/min capacity, with flow control valves.

4.3.4 Gas Regulators. For required gas cylinders.

4.3.5 Thermometer. Accurate to 1°C, to measure temperature of heated sample loop at time of sample injection.

4.3.6 Barometer. Accurate to 5 mm Hg, to measure atmospheric pressure around gas chromatograph during sample analysis.

4.3.7 Pump. Leak-free, with minimum of 100-ml/min capacity.

4.3.8 Recorder. Strip chart type, optionally equipped with either disc or electronic integrator.

4.3.9 Planimeter. Optional, in place of disc or electronic integrator on recorder, to measure chromatograph peak areas.

4.4 Calibration. Sections 4.4.2 through 4.4.4 are for the optional procedure in Section 7.1.

4.4.1 Tubing. Teflon, 6.4-mm outside diameter, separate pieces marked for each calibration concentration.

4.4.2 Tedlar Bags. Sixteen-inch-square size, with valve; separate bag marked for each calibration concentration.

4.4.3 Syringes. 0.5-ml and 50-μl, gas tight, individually calibrated to dispense gaseous vinyl chloride.

4.4.4 Dry Gas Meter, With Temperature and Pressure Gauges. Singer model DTM-115 with 802 index, or equivalent, to meter nitrogen in preparation of standard gas mixtures, calibrated at the flowrate used to prepare standards.

5. *Reagents.*

Use only reagents that are of chromatograph grade.

5.1 Analysis. The following are required for analysis.

5.1.1 Helium or Nitrogen. Zero grade, for chromatographic carrier gas.

5.1.2 Hydrogen. Zero grade.

5.1.3 Oxygen or Air. Zero grade, as required by the detector.

5.2 Calibration. Use one of the following options: either 5.2.1 and 5.2.2, or 5.2.3.

5.2.1 Vinyl Chloride. Pure vinyl chloride gas certified by the manufacturer to contain a mimimum of 99.9 percent vinyl chloride, for use in the preparation of standard gas mixtures in Section 7.1. If the gas manufacturer maintains a bulk cylinder supply of 99.9+ percent vinyl chloride, the certification analysis may have been performed on this supply rather than on each gas cylinder prepared from this bulk supply. The date of gas cylinder preparation and the certified analysis must have been affixed to the cylinder before shipment from the gas manufacturer to the buyer.

5.2.2 Nitrogen. Zero grade, for preparation of standard gas mixtures as described in Section 7.1.

5.2.3 Cylinder Standards (3). Gas mixture standards (50-, 10-, and 5-ppm vinyl chloride in nitrogen cylinders). The tester may use cylinder standards to directly prepare a chromatograph calibration curve as described in Section 7.2.2, if the following conditions are met: (a) The manufacturer certifies the gas composition with an accuracy of ± 3 percent or better (see Section 5.2.3.1); (b) The manufacturer recommends a maximum shelf life over which the gas concentration does not change by greater than ± 5 percent from the certified value; (c) The manufacturer affixes the date of gas cylinder preparation, certified vinyl chloride concentration, and recommended maximum shelf life to the cylinder before shipment to the buyer.

5.2.3.1 Cylinder Standards Certification. The manufacturer shall certify the concentration of vinyl chloride in nitrogen in each cylinder by (a) directly analyzing each cylinder and (b) calibrating his analytical procedure on the day of cylinder analysis. To calibrate his analytical procedure, the manufacturer shall use, as a minimum, a three-point calibration curve. It is recommended that the manufacturer maintain (1) a high-concentration calibration standard (between 50 and 100 ppm) to prepare his calibration curve by an appropriate dilution technique and (2) a low-concentration calibration standard (between 5 and 10 ppm) to verify the dilution technique use. If the difference between the apparent concentration read from the calibration curve and the true concentration assigned to the low-concentration calibration standard exceeds 5 percent of the true concentration, the manufacturer shall determine the source of error and correct it, then repeat the three-point calibration.

5.2.3.2 Verification of Manufacturer's Calibration Standards. Before using a standard, the manufacturer shall verify each calibration standard (a) by comparing it to gas mixtures prepared (with 99 Mol precent vinyl chloride) in accordance with the procedure described in Section 7.1 or (b) by having it analyzed by the National Bureau of Standards. The agreement between the initially determined concentration value and the verification concentration value must be within ±5 percent. The manufacturer must reverify all calibration standards on a time interval

consistent with the shelf life of the cylinder standards sold.

5.2.4 Audit Cylinder Standards (2). Gas mixture standards with concentrations known only to the person supervising the analysis of samples. The audit cylinder standards shall be identically prepared as those in Section 5.2.3 (Vinyl chloride in nitrogen cylinders). The concentrations of the audit cylinders should be: one low-concentration cylinder in the range of 5 of 20 ppm vinyl chloride, and one high-concentration cylinder in the range of 20 to 50 ppm. When available, the tester may obtain audit cylinders by contacting: Environmental Protection Agency, Environmental Monitoring Systems Laboratory, Quality Assurance Division (MD–77), Research Triangle Park, North Carolina 27711. If audit cylinders are not available at the Enviromental Protection Agency, the tester must secure an alternative source.

6. *Procedure.*

6.1 Sampling. Assemble the sample train as shown in Figure 106–1. Perform a bag leak check according to Section 7.3.2. join the quick connects as illustrated, and determine that all connections between the bag and the probe are tight. Place the end of the probe at the centroid of the stack and start the pump with the needle value adjusted to yield of flow that will fill over 50 percent of bag volume in the specified sample period. After allowing sufficient time to purge the line several times, connect the vacuum line to the bag and evacuate the bag until the rotameter indicates no flow. Then reposition the sample and vacuum lines and begin the actual sampling, keeping the rate proprotional to the stack velocity. At all times, direct the gas exiting the rotameter away from sampling personnel. At the end of the sample period, shut off the pump, disconnect the sample line from the bag, and disconnect the vaccuum line from the bag container. Protect the bag container from sunlight.

6.2 Sample Storage. Keep the sample bags out of direct sunlight. When at all possible, analysis is to be performed within 24 hours, but in no case in excess of 72 hours of sample collection. Aluminized Mylar bag samples must be analyzed within 24 hours.

6.3 Sample Recovery. With a new piece of Teflon tubing identified for that bag, connect a bag inlet valve to the gas chromatograph sample valve. Switch the valve to receive gas from the bag through the sample loop. Arrange the equipment so the sample gas passes from the sample value to 100-ml/min rotameter with flow control valve followed by a charcoal tube and a 1-in. H_2O pressure gauge. The tester may maintain the sample flow either by a vacuum pump or container pressurization if the collection bag remains in the rigid container. After sample loop purging is ceased, allow the pressure gauge to return to zero before activating the gas sampling valve.

6.4 Analysis. Set the column temperature to 100°C and the detector temperature to 150°C. When optimum hydrogen and oxygen flow rates have been determined, verify and maintain these flow rates during all chromatograph operations. Using zero helium or nitrogen as the carrier gas, establish a flow rate in the range consistent with the manufacturer's requirements for satisfactory detector operation. A flow rate of approximately 40 ml/min should produce adequate separations. Observe the base line periodically and determine that the noise level has stabilized and that base-line drift has ceased. Purge the sample loop for 30 seconds at the rate of 100 ml/min, then activate the sample valve. Record the injection time (the position of the pen on the chart at the time of sample injection), sample number, sample loop temperature, column temperature, carrier gas flow rate, chart speed, and attenuator setting. Record the barometric pressure. From the chart, note the peak having the retention time corresponding to vinyl chloride, as determined in Section 7.2.1. Measure the vinyl chloride peak area, A_m, by use of a disc integrator, electronic integrator, or a planimeter. Measure and record the peak height, H, H_m. Record A_m and the retention time. Repeat the injection at least two times or until two consecutive values for the total area of the vinyl chloride peak do not vary more than 5 percent. Use the average value for these two total areas to compute the bag concentration.

Compare the ratio of H_m to A_m for the vinyl chloride sample with the same ratio for the standard peak that is closest in height. If these ratios differ by more than 10 percent, the vinyl chloride peak may not be pure (possibly acetaldehyde is present) and the secondary column should be employed (see Section 4.3.2.2).

6.5 Determination of Bag Water Vapor Content. Measure the ambient temperature and barometric pressure near the bag. From a water saturation vapor pressure table, determine and record the water vapor content of the bag as decimal figure. (Assume the relative humidity to be 100 percent unless a less value is known.)

7. *Preparation of Standard Gas Mixtures, Calibration, and Quality Assurance.*

7.1 Preparation of Vinyl Chloride Standard Gas Mixtures. (Optional Procedure—delete if cylinder standards are used.) Assemble the apparatus shown in Figure 106–2. Evacuate a 16-inch-square Tedlar bag that has passed a leak check (described in Section 7.3.2) and meter in 5.0 liters of nitrogen. While the bag is filling, use the 0.5-ml syringe to inject 250 μl of 99.9+ percent vinyl chloride gas through the wall of the bag. Upon withdrawing the syringe, immediately cover the resulting hold with a piece of adhesive tape. The bag now contains a vinyl chloride concentration of 50 ppm. In a like manner use the 50 μl syringe to prepare gas mixtures having 10- and 5-ppm vinyl chloride concentrations. Place each bag on a smooth surface and alternately depress opposite sides of the bag 50 times to further mix the gases. These gas mixture standards may be used for 10 days from the date of preparation, after which time new gas mixtures must be prepared. (Caution: Contamination may be a problem when a bag is reused if the new gas mixture standard is a lower concentration than the previous gas mixture standard.)

7.2 Calibration.

7.2.1 Determination of Vinyl Chloride Retention Time. (This section can be performed simultaneously with Section 7.2.2.) Establish chromatograph conditions identical with those in Section 6.4 above. Determine proper attenuator position. Flush the sampling loop with zero helium or nitrogen and activate the sample valve. Record the injection time, sample loop temperature, column temperature, carrier gas flow rate, chart speed, and attenuator setting. Record peaks and detector responses that occur in the absence of vinyl chloride. Maintain conditions with the equipment plumbing arranged identically to Section 6.3, and flush the sample loop for 30 seconds at the rate of 100 ml/min with one of the vinyl chloride calibration mixtures. Then activate the sample valve. Record the injection time. Select the peak that corresponds to vinyl chloride. Measure the distance on the chart from the injection time to the time at which the peak maximum occurs. This quantity divided by the chart speed is defined as the retention time. Since other organics may be present in the sample, positive identification of the vinyl chloride peak must be made.

7.2.2 Preparation of Chromatograph Calibration Curve. Make a gas chromatographic measurement of each gas mixture standard (described in Section 5.2.3 or 7.1) using conditions identical with those listed in Sections 6.3

and 6.4. Flush the sampling loop for 30 seconds at the rate of 100 ml/min with one of the standard mixtures, and activate the sample valve. Record the concentration of vinyl chloride injected (C_c), attenuator setting, chart speed, peak area, sample loop temperature, column temperature, carrier gas flow rate, and retention time. Record the barometric pressure. Calculate A_c, the peak area multiplied by the attenuator setting. Repeat until two consecutive injection areas are within 5 percent, then plot the average of those two values versus C_c. When the other standard gas mixtures have been similarly analyzed and plotted, draw a straight line through the points derived by the least squares method. Perform calibration daily, or before and after each set of bag samples, whichever is more frequent.

7.3 Quality Assurance.

7.3. Analysis Audit. Immediately after the preparation of the calibration curve and prior to the sample analyses, perform the analysis audit described in Appendix C, Supplement B: "Procedure for Field Auditing GC Analysis."

7.3.2 Bag Leak Checks. Checking of bags for leaks is required after bag use and strongly recommended before bag use. After each use, connect a water manometer and pressurize the bag to 5–10 cm H_2O (2–4 in H_2O). Allow to stand for 10 min. Any displacement in the water manometer indicates a leak. Also, check the rigid container for leaks in this manner.

Note.—An alternative leak check method is to pressurize the bag to 5–10 cm H_2O or 2–4 in. H_2O and allow it to stand overnight. A deflated bag indicates a leak.

For each sample bag in its rigid container, place a rotameter in-line between the bag and the pump inlet. Evacuate the bag. Failure of the rotameter to register zero flow when the bag appears to be empty indicates a leak.

8. *Calculations.*

8.1 Determine the sample peak area, A_c, as follows:

$$A_c = A_m A_f$$

Where:

A_m = Measured peak area.
A_f = Attenuation factor.

8.2 Vinyl Chloride Concentrations. From the calibration curve described in Section 7.2.2, select the value of, C_c, that corresponds to A_c, the sample peak area. Calculate the concentration of vinyl chloride in the bag, C_b, as follows:

$$C_b = \frac{C_c P_r T_i}{P_i T_r (1 - B_{wb})} \qquad \text{Eq. 106-2}$$

Where:

P_r = Reference pressure, the laboratory pressure recorded during calibration, mm Hg.
T_i = Sample loop temperature on the absolute escale at the time of analysis, °K.
P_i = Laboratory pressure at time of analysis, mm Hg.
T_r = Reference temperature, the sample loop temperature recorded during calibration, °K.
B_{wb} = Volume fraction of water vapor content of the bag sample, as analyzed.

9. *References.*

1. Brown, D.W., E.W. Loy, and M.H. Stephenson. Vinyl Chloride Monitoring Near the B. F. Goodrich Chemical Company in Louisville, Kentucky. Region IV, U.S. Environmental Protection Agency, Surveillance and Analysis Division, Athens, GA. June 24, 1974.

2. G.D. Clayton and Associates. Evaluation of a Collection and Analytical Procedure for Vinyl Chloride in Air. EPA Contract No. 68–02–1408, Task Order No. 2, EPA Report No. 75–VCL–1. December 13, 1974.

3. Midwest Research Institute. Standardization of Stationary Source Emission Method for Vinyl Chloride. EPA–600/4–77–026. May 1977.

4. Scheil, W. and M.C. Sharp, Collaborative Testing of EPA Method 106 (Vinyl Chloride) that will provide for a Standardized Stationary Source Emission Measurement Method. EPA 600/4–78–058. Emission Monitoring and Support Laboratory. Research Triangle Park, NC. October 1978.

Method 107—Determination of Vinyl Chloride Content of Inprocess Wastewater Samples, and Vinyl Chloride Content of Polyvinyl Chloride Resin, Slurry, Wet Cake, and Latex Samples

Introduction[1]

Performance of this method should not be attempted by persons unfamiliar with the operation of a gas chromatograph, nor by those who are unfamiliar with source sampling, because knowledge beyond the scope of this presentation is required. Care must be exercised to prevent exposure of sampling personnel to vinyl chloride, a carcinogen.

[1] Mention of trade names or specific products does not constitute endorsement by the U.S. Environmental Protection Agency.

1. *Applicability and Principle.*

1.1 Applicability. This method applies to the measurement of the vinyl chloride monomer (VCM) content of inprocess wastewater samples, and the residual vinyl chloride monomer (RVCM) content of polyvinyl chloride (PVC) resins, wet cake, slurry, and latex samples. It cannot be used for polymer in fused forms, such as sheet or cubes. This method is not acceptable where methods from Section 304(h) of the Clean Water Act, 33 U.S.C. 1251 et seq. (the Federal Water Pollution Control Amendments of 1972 as amended by the Clean Water Act of 1977) are required.

1.2 Principle. The basis for this method relates to the vapor equilibrium that is established between RVCM, PVC resin, water, and air in a closed system. The RVCM in a PVC resin will equilibrate rapidly in a closed vessel, provided that the temperature of the PVC resin is maintained above the glass transition temperature of that specific resin.

2. *Range and Sensitivity.*

The lower limit of detection of vinyl chloride will vary according to the chromatography used. Values reported include 1×10^{-7} mg and 4×10^{-7} mg. With proper calibration, the upper limit may be extended as needed.

3. *Interferences.*

The chromatograph columns and the corresponding operating parameters herein described normally provide an adequate resolution of vinyl chloride; however, resolution interferences may be encountered on some sources. Therefore, the chromatograph operator shall select the column and operating parameters best suited to his particular analysis requirements, subject to the approval of the Administrator. Approval is automatic provided that the tester produces confirming data through an adequate supplemental analytical technique, such as analysis with a different column or GC/mass spectroscopy, and has the data available for review by the Administrator.

4. *Precision and Reproducibility.*

An interlaboratory comparison between seven laboratories of three resin samples, each split into three parts, yielded a standard deviation of 2.63 percent for a sample with a mean of 2.09 ppm, 4.16 percent for a sample with a mean of 1.66 ppm, and 5.29 percent for a sample with a mean of 62.66 ppm.

5. *Safety.*

Do not release vinyl chloride to the laboratory atmosphere during preparation of standards. Venting or purging with VCM/air mixtures must be

held to a minimum. When they are required, the vapor must be routed to outside air. Vinyl Chloride, even at low ppm levels, must never be vented inside the laboratory. After vials have been analyzed, the gas must be vented prior to removal of the vial from the instrument turntable. Vials must be vented through a hypodermic needle connected to an activated charcoal tube to prevent release of vinyl chloride into the laboratory atmosphere. The charcoal must be replaced prior to vinyl chloride breakthrough.

6. *Apparatus.*

6.1 Sampling. The following equipment is required:

6.1.1 Glass Bottles. 60-ml (2-oz) capacity, with wax-lined screw on tops, for PVC samples.

6.1.2 Glass Vials. 50-ml capacity Hypo-vials, sealed with Teflon faced Tuf-Bond discs, for water samples.

6.1.3 Adhesive Tape. To prevent loosening of bottle tops.

6.2 Sample Recovery. The following equipment is required:

6.2.1 Glass Vials. With seals and caps, Perkin-Elmer Corporation No. 105–0118, or equivalent. The seals must be made from butyl rubber. Silicone rubber seals are not acceptable.

6.2.2 Analytical Balance. Capable of weighing to ± 0.0001 gram.

6.2.3 Vial Sealer. Perkin-Elmer No. 105.0106 or equivalent.

6.3 Analysis. The following equipment is required:

6.3.1 Gas Chromatograph. Perkin-Elmer Corporation Model F–40, F–42, or F–45 Head-Space Analyzer, or equivalent. Equipped with backflush accessory.

6.3.2 Chromatograhic Columns. Stainless steel 1 m by 3.2 mm and 2 m by 3.2 mm, both containing 50/80-mesh Porapak Q. The analyst may use other columns provided that the precision and accuracy of the analysis of vinyl chloride standards are not impaired and he has available for review information confirming that there is adequate resolution of the vinyl chloride peak. (Adequate resolution is defined as an area overlap of not more than 10 percent of the vinyl chloride peak by an interferent peak. Calculation of area overlap is explained in Appendix C, Supplement A: "Determination of Adequate Chromatographic Peak Resolution.") Two 1.83 m columns, each containing 1 percent Carbowax 1500 on Carbopak B, have been suggested for samples containing acetaldehyde.

6.3.3 Thermometer. 0 to 100°C, accurate to ± 0.1°C, Perkin-Elmer No. 105–0109, or equivalent.

6.3.4 Sample Tray Thermostat System. Perkin-Elmer No. 105.0103, or equivalent.

6.3.5 Septa. Sandwich type, for automatic dosing, 13 mm, Perkin-Elmer No. 105–1008, or equivalent.

6.3.6 Intergrator-Recorder. Hewlett-Packard Model 33080A, or equivalent.

6.3.7 Filter Drier Assembly (3). Perking-Elmer No. 2230117, or equivalent.

6.3.8 Soap Film Flowmeter. Hewlett Packard No. 0101–0113, or equivalent.

6.3.9 Reguators. For required gas cylinders.

6.3.10 Headspace Vial Pre-Pressurizer. Nitrogen pressurized hypodermic needle inside protective shield. (Blueprint available from Test Support Section, Emission Measurement Branch, Office of Air Quality Planning and Standards, Environmental Protection Agency, Mail Drop 19, Research Triangle Park, N.C. 27711.)

7. *Reagents.*

Use only reagents that are of chromatograph grade.

7.1 Analysis. The following items are required for analysis:

7.1.1 Hydrogen. Zero grade.

7.1.2 Nitrogen. Zero grade.

7.1.3 Air. Zero grade.

7.2 Calibration. The following items are required for calibration:

7.2.1 Cylinder Standards (4). Gas mixture standards (50-, 500-, 2000- and 4000-ppm vinyl chloride in nitrogen cylinders). The tester may use cylinder standards to directly prepare a chromatograph calibration curve as described in Section 9.2, if the following conditions are met: (a) The manufacturer certifies the gas composition with an accuracy of ±3 percent or better (see Section 7.2.1.1). (b) The manufacturer recommends a maximum shelf life over which the gas concentration does not change by greater than ±5 percent from the certified value. (c) The manufacturer affixes the date of gas cylinder preparation, certified vinyl chloride concentration, and recommended maximum shelf life to the cylinder before shipment to the buyer.

7.2.1.1 Cylinder Standards Certification. The manufacturer shall certify the concentration of vinyl chloride in nitrogen in each cylinder by (a) directly analyzing each cylinder and (b) calibrating his analytical procedure on the day of cylinder analysis. To calibrate his analytical procedure, the manufacturer shall use, as a minimum, a three-point calibration curve. It is recommended that the manufacturer maintain (1) a high-concentration calibration standard (between 4000 and 8000 ppm) to prepare his calibration curve by an appropriate dilution technique and (2) a low-concentration calibration standard (between 50 and 500 ppm) to verify the dilution technique used. If the difference between the apparent concentration read from the calibration curve and the true concentration assigned to the low-concentration calibration standard exceeds 5 percent of the true concentration, the manufacturer shall determine the source of error and correct it, then repeat the three-point calibration.

7.2.1.2 Verification of Manufacturer's Calibration Standards. Before using, the manufacturer shall verify each calibration standard by (a) comparing it to gas mixtures prepared (with 99 Mol percent vinyl chloride) in accordance with the procedure described in Section 7.1 of Method 106 or by (b) having it analyzed by the National Bureau of Standards. The agreement between the initially determined concentration value and the verification concentration value must be within ±5 percent. The manufacturer must reverify all calibration standards on a time interval consistent with the shelf life of the cylinder standards sold.

8. *Procedure.*

8.1 Sampling.

8.1.1 PVC Sampling. Allow the resin or slurry to flow from a tap on the tank or silo until the tap line has been well purged. Extend and fill a 60-ml-sample bottle under the tap, and immediately tighten a cap on the bottle. Wrap adhesive tape around the cap and bottle to prevent the cap from loosening. Place an identifying label on each bottle, and record the date, time, and sample location both on the bottles and in a log book.

8.1.2 Water Sampling. Prior to use, the 50-ml vials (without the discs) must be capped with aluminum foil and muffled at 400° C for at last 1 hour to destroy or remove any organic matter that could interfere with analysis. At the sampling location fill the vials bubble-free to overflowing so that a convex meniscus forms at the top. The excess water is displaced as the sealing disc is carefully placed, with the Teflon side down, on the opening of the vial.

Place the aluminum seal over the disc and the neck of the vial, and crimp into place. Affix an identifying label on the bottle, and record the date, time, and sample location both on the vials and in a log book. All samples must be kept refrigerated until analyzed.

8.2 Sample Recovery. Samples must be run within 24 hours.

8.2.1 Resin Samples. The weight of the resin used must be between 3.5 and 4.5 grams. An exact weight must be

obtained (±0.0001 g) for each sample. In the case of suspension resins, a volumetric cup can be prepared for holding the required amount of sample. When the cup is used, open the sample bottle, and add the cup volume of resin to the tared sample vial (tared, including septum and aluminum cap). Obtain the exact sample weight, add two drops of distilled water, and immediately seal the vial. Report this value on the data sheet; it is required for calculation of RVCM. In the case of dispersion resins, the cup cannot be used. Weigh the sample in an aluminum dish, transfer the sample to the tared vial, and accurately weigh it in the vial. After pre-pressurization of the samples, condition them for a minimum of 1 hour in the 90° C bath. Do not exceed 5 hours.

Note.—Some aluminum vial caps have a center section that must be removed prior to placing into sample tray. If the cap is not removed, the injection needle will be damaged.

8.2.2 Suspension Resin Slurry and Wet Cake Samples. Decant the water from a wet cake sample, and turn the sample bottle upside down onto a paper towel. Wait for the water to drain, place approximately 0.2 to 4.0 grams of the wet cake sample in a tared vial (tared, including setum and aluminum cap) and seal immediately. Then determine the sample weight (±0.0001 g). All samples must be pre-pressurized and then conditioned for 1 hour at 90° C. A sample of wet cake is used to determine TS (total solids). This is required for calculating the RVCM.

8.2.3 Dispersion Resin Slurry and Geon Latex Samples. The materials should not be filtered. Sample must be thoroughly mixed. Using a tared vial (tared, including septum and alumimum cap) add approximately 8 drops (0.25 to 0.35 g) of slurry or latex using a medicine dropper. This should be done immediately after mixing. Seal the vial as soon as possible. Determine sample weight (±0.0001 g). After pre-pressurization, condition the vial for 1 hour at 90°C in the analyzer bath. Determine the TS on the slurry sample (Section 8.3.5.).

8.2.4 Inprocess Wastewater Samples. Using a tared vial (tared, including septum and aluminum cap) quickly add approximately 1 cc of water using a medicine dropper. Seal the vial as soon as possible. Determine sample weight (±0.0001 g). Pre-pressurize the vial, and then condition for 2 hours at 90°C in the analyzer bath.

8.3 Analysis

8.3.1 Preparation of Equipment. Install the chromatographic column and condition overnight at 160°C. In the first operation, Porapak columns must be purged for 1 hour at 230°C. Do not connect the exit end of the column to the detector while conditioning. Hydrogen and air to the detector must be turned off while the column is disconnected.

8.3.1.1 Flow Rate Adjustments. Adjust flow rates as follows:

a. Nitrogen Carrier Gas. Set regulator on cylinder to read 50 psig. Set regulator on chromatograph to produce a flow rate of 30.0 cc/min. Accurately measures the flow rate at the exit end of the column using the soap film flowmeter and a stopwatch, with the oven and column at the analysis temperature. After the instrument program advances to the "B" (backflush) mode, adjust the nitrogen pressure regulator to exactly balance the nitrogen flow rate at the detector as was obtained in the "A" mode.

b. Vial Pre-Pressurizer Nitrogen. After the nitrogen carrier is set, solve the following equation and adjust the pressure on the vial pre-pressurizer accordingly.

$$P = \frac{T_1}{T_2}\left[P_1 - \frac{P_{w1} - P_{w2}}{7.50}\right] - 10 \text{ k Pa}$$

Where:

T_1 = Ambient temperature, °K.
T_2 = Conditioning bath temperature, °K.
P_1 = Gas chromatograph absolute dosing pressure (analysis mode), k Pa.
P_{w1} = Water vapor pressure @ 90°C (525.8 mm Hg).
P_{w2} = Water vapor pressure @ 22°C (19.8 mm Hg).
7.50 = mm Hg per k Pa.
10 k Pa = Factor to adjust the pre-pressurized pressure to slightly less than the dosing pressure.

Because of gauge errors, the apparatus may over-pressurize the vial. If the vial pressure is at or higher than the dosing pressure, an audible double injection will occur. If the vial pressure is too low, errors will occur on resin samples because of inadequate time for headspace gas equilibrium. This condition can be avoided by running several standard gas samples at various pressures around the calculated pressure, and then selecting the highest pressure that does not produce a double injection. All samples and standards must be pressurized for 60 seconds using the vial pre-pressurizer. The vial is then placed into the 90°C conditioning bath and tested for leakage by placing a drop of water on the septum at the needle hole.

c. Burner Air Supply. Set regulatory on cylinder to read 50 psig. Set regulator on chromatograph to supply air to burner at a rate between 250 and 300 cc/min. Check with bubble flowmeter.

d. Hydrogen Supply. Set regulator on cylinder to read 30 psig. Set regulator on chromatograph to supply approximately 35 ± 5 cc/min. Optimize hydrogen flow to yield the most sensitive detector response without extinguishing the flame. Check flow with bubble meter and record this flow.

8.3.1.2 Temperature Adjustments. Set temperatures as follows:

a. Oven (chromatograph column), 140°C.

b. Dosing Line, 170°C.

c. Injection Block, 170°C.

d. Sample Chamber, Water Temperature, 90°C ± 1.°0C.

8.1.3 Ignition of Flame Ionization Detector. Ignite the detector according to the manufacturer's instructions.

8.3.1.4 Amplifier Balance. Balance the amplifier according to the manufacturer's instructions.

8.3.2 Programming the Chromatograph. Program the chromatograph as follows:

a. I–Dosing or Injection Time. The normal setting is 2 seconds.

b. A–Analysis Time. The normal setting is approximately 70 percent of the VCM retention time. When the analysis timer terminates, the programmer initiates backflushing of the first column.

c. B–Backflushing Time. The normal setting is double the analysis time.

d. W–Stabilization Time. The normal setting is 0.5 minute to 1.0 minute.

e. X–Number of Analyses Per Sample. The nomal setting is 1.

8.3.3 Preparation of Sample Turntable. Before placing any sample into turntable, be certain that the center section of the aluminum cap has been removed. All samples and standards must be pressurized for 60 seconds by using the vial pre-pressurizer. The numbered sample vials should be placed in the corresponding numbered positions in the turntable. Insert samples in the following order:

Positions 1 and 2—Old 2000-ppm standards for conditioning. These are

necessary only after the analyzer has not been used for 24 hours or longer.

Positions 3—50-ppm standard, freshly prepared.

Positions 4—500-ppm standard, freshly prepared.

Position 5—2000-ppm standard, freshly prepared.

Position 6—4000-ppm standard, freshly prepared.

Position 7—Sample No. 7 (This is the first sample of the day, but is given as 7 to be consistent with the turntable and the integrator printout.)

After all samples have been postitioned, insert the second set of 50-, 500-, 2000-, and 4000-ppm standards. Samples, including standards, must be conditioned in the bath of 90°C for 1 hour (not to exceed 5 hours).

8.3.4 Start Chromatograph Program. When all samples, including standards, have been conditioned at 90°C for 1 hour, start the analysis program according to the manufacturer's instructions. These instructions must be carefully followed when starting and stopping a program to prevent damage to the dosing assembly.

8.3.5 Determination of Total Solids (TS). For wet cake, slurry, resin solution, and PVC latex samples, determine TS for each sample by accurately weighing approximately 3 to 4 grams of sample in an aluminum pan before and after placing in a draft oven (105 to 110°C). Samples must be dried to constant weight. After first weighing, return the pan to the oven for a short period of time, and then reweigh to verify complete dryness. TS is then calculated as the final sample weight divided by initial sample weight.

9. *Calibration.*

Calibration is to be performed each 8-hour period when the instrument is used. Each day, prior to running samples, the column should be conditioned by running two 2000-ppm standards from the previous day.

9.1 Preparation of Standards. Calibration standards are prepared as follows: Place two drops of distilled water (with the use of an eyedropper) in the sample vial, then fill the vial with the VCM/nitrogen standard, rapidly seat the septum, and seal with the aluminum cap. Use a ⅛-in. stainless steel line from the cylinder to the vial. Do not use rubber or tygon tubing. The sample line from the cylinder must be purged (into a properly vented hood) for several minutes prior to fill the vials. After purging, reduce the flow rate to 500 to 1000 cc/min. Place end of tubing into vial (near bottom). Position a septum on top of the vial, pressing it against the ⅛-in. filling tube to minimize the size of the vent opening. This is necessary to minimize mixing air with the standard in the vial. Each vial is to be purged with standard for 90 seconds, during which time the filling tube is gradually slid to the top of the vial. After the 90 seconds, the tube is removed with the septum, simultaneously sealing the vial. Practice will be necessary to develop good technique. Rubber gloves should be worn during the above operations. The sealed vial must then be pressurized for 60 seconds using the vial pre-pressurizer. Test the vial for leakage by placing a drop of water on the septum at the needle hole.

9.2 Preparation of Chromatograph Calibration Curve.

Prepare two 50-, 500-, 2000-, and 4000-ppm standard samples. Run the calibration samples in exactly the same manner as regular samples. Plot A_s, the integrator area counts for each standard sample, versus C_c, the concentration of vinyl chloride in each standard sample. Draw a straight line through the points derived by the least squares method.

10. *Calculations.*

10.1 Response Factor. If the calibration curve described in section 9.2 passes through zero, a response factor, R_f, may be used to compute vinyl chloride concentrations. To compute a response factor, divide any particular A_s by the corresponding C_c.

$$R_f = A_s / C_c \qquad \text{Eq. 107-1}$$

If the calibration curve does not pass through zero, the calibration curve must be employed to calculate each sample concentration unless the error introduced by using a particular R_f is known.

10.2 Residual Vinyl Chloride Monomer Concentration, (C_{rvc}) or Vinyl Chloride Monomer Concentration. Calculate C_{rvc} in ppm or mg/kg as follows:

$$C_{rvc} = \frac{A_s P_a}{R_f T_1}\left[\frac{M_v V_g}{R m} + K_p (TS) T_2 + K_w (1 - TS) T_2\right] \qquad \text{Eq. 107-2}$$

Where:

A_s=Chromatograph area counts of vinyl chloride for the sample.

P_a=Ambient atmospheric pressure, mm Hg.

R_f=Response factor in area counts per ppm VCM.

T_1=Ambient laboratory temperature, °K.

M_v=Molecular weight of VCM (62.5 g/mole).

V_g=Volume of the vapor phase, cm^3.

R=Gas constant (62360 cm^3 · mm Hg/mole · °K).

m=Sample weight, g.

K_p=Henry's Law Constant for VCM in PVC @ 90°C (6.52×10^{-6} g/g/mm Hg).

TS=Total solids expressed as a decimal fraction.

T_2=Equilibrium temperature, °K.

K_w=Henry's Law Constant for VCM in water @ 90°C (7×10^{-7} g/g/mm Hg).

Assuming the following conditions are met, these values can be substituted into equation 107-2:

P_a=750 mm Hg.

V_g=Vial volume—sample volume (Fisher vials are 22.0 cm^3 and Perkin-Elmer vials are 21.8 cm^3).

T_1=23°C or 296°K.

T_2=90°C or 363°K.

$$C_{rvc} = \frac{A_s\ 750}{R_f\ 296}\left[\frac{(62.5)\ 21.8 - \frac{m(TS)}{1.36} - \frac{m(1-TS)}{0.9653}}{62360\ m} + 6.25\times10^{-6}(TS)(363) + 7.0\times10^{-7}(1-TS)(363)\right]$$

Results calculated using these equations represent concentration based on the total sample. To obtain results based on dry PVC content, divide by TS.

11. *References.*

1. Residual Vinyl Chloride Monomer Content of Polyvinyl Chloride Resins, Latex, Wet Cake, Slurry and Water Samples, B. F. Goodrich Chemical Group Standard Test Procedure No. 1005-E. B. F. Goodrich Technical Center, Avon Lake, Ohio, October 8, 1979.

2. Berens, A. R., "The Diffusion of Vinyl Chloride in Polyvinyl Chloride," ACS—Division of Polymer Chemistry, Polymer Preprints 15 (2): 197, 1974.

3. Berens, A. R., "The Diffusion of Vinyl Chloride in Polyvinyl Chloride," ACS—Division of Polymer Chemistry, Polymer Preprints 15 (2): 203, 1974.

4. Berens, A. R., L. B. Crider, C. J. Tomanek and J. M. Whitney, "Analysis for Vinyl Chloride in PVC Powders by Head—Space Gas Chromatography," to be published.

[FR Doc. 80-35850 Filed 11-17-80; 8:45 am]

BILLING CODE 6560-26-M

federal register

Tuesday
November 18, 1980

Part III

Department of Health and Human Services

Food and Drug Administration

Single-Entity Barbiturates; Class Labeling Guideline

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80D-0278]

Single-Entity Barbiturates; Class Labeling Guidance

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administratiaon (FDA) is issuing a class labeling guideline for the professional labeling of prescription single-entity barbiturate drug products. Class labeling is appropriate for these products because they are all closely related in chemical structure, pharmacology, therapeutic activity, and adverse reactions. The guideline is intended to promote the use of identical professional labeling for each member of the single-entity barbiturate drug class.

DATE: Effective November 18, 1980, a person may adopt the class labeling guideline for single-entity barbiturate drug products and rely on it to meet the prescription drug labeling requirements.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Benjamin P. Lewis, Jr., Bureau of Drugs (HFD-107), Food and Drug Administration, 5600 Fishers Land, Rockville, MD 20857, 301-443-6004.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration (FDA) has prepared a guideline for the professional labeling of prescription single-entity barbiturate drug products. The guideline labeling can be used for each product within drug class becuase all druge in the class are closely related in chemical structure, pharmacology, therapeutic activity, and adverse reactions.

A drug is misbranded under section 502(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(f)) unless the drug's labeling bears adequate directions for use by laypersons. FDA may, however, exempt drugs from that requirement. Section 201.100 (21 CFR 21.100) of FDA's general labeling regulations exempts prescription drugs from the requirement under the condition that their labeling contain adequate information for health care professionals to prescribe and administer the drug (21 CFR 201.100(d)). The labeling is required to contain the information and be in the format specified in §§ 201.56 and 201.57 (21 CFR 201.56 and 201.57) (published in the Federal Register of June 26, 1979; 44 FR 37434), which sections provide general and specific requirements on the content and format of professional labeling for human prescription drugs. The application of those regulations to drug products is proceeding under a schedule established in § 201.59 (21 CFR 201.59) (published in Federal Register of May 16, 1980; 45 FR 32550). As described more fully in § 201.59, the regulations apply to single-entity barbiturate drug products as follows: (1) on April 10, 1981 to drug products that are not subject to section 505 of the act (21 U.S.C. 355), (2) on July 1, 1983 to drug products that on December 26, 1979 were subject to an approved new drug application under section 505 of the act, and duplicates of those products, and (3) as of December 26, 1979 to other single-entity barbiturate drug products for which marketing approval under section 505 of the act is sought from FDA.

A manufacturer of a prescription drug product may use any one of three types of professional labeling to comply with the labeling requirements for prescription drug products: what FDA refers to as product specific labeling, generic labeling, and class labeling. "Product specific labeling" refers to labeling that pertains only to a single manufacturer's drug product, and the labeling refers to the product by its brand name. "Generic labeling" refers to labeling that pertains to drug products that each contain the same active drug ingredient, but the products may be marketed under different brand names and by different persons. "Class labeling" refers to labeling that pertains to each drug in a therapeutic class of drugs and provides information about all drugs in the class, but the products may be marketed under different brand names and by different persons, and the products may contain different active drug ingredients.

The agency now provides guideline class labeling for the professional labeling for oral contraceptive drug products (see the Federal Register of January 31, 1978 (43 FR 4223)), digoxin drug products (see 21 CFR 310.500), and intrauterine devices for contraception (IUD's) that are regulated as prescription drugs (see 21 CFR 310.502(b)(1)). The agency intends to continue to develop class labeling for each therapeutic class in which the members of the class are closely related in chemical structure, pharmacology, therapeutic activity, and adverse reactions and to make that labeling available as a guideline. Although FDA has sometimes codified class labeling (as it did with digoxin and IUD's), most recently it has simply made the labeling publicly available either by publication in the Federal Register of the guideline itself or a notice of its availability. Because this guideline for single-entity barbiturates is the first of several new class labeling guidelines the agency intends to issue, the agency believes that both manufacturers of single-entity barbiturates and other persons who may be interested in future guidelines for other drug classes will want to to review this guideline. Thus, the expected interest in this guideline warrants the publication of the guideline text in the Federal Register. The agency does not, however, plan to publish the text of future class labeling guidelines in the Federal Register, but instead plans to publish only notices of their availability.

Class labeling guidelines should enhance the agency's regulatory program for prescription drugs. The guidelines will help FDA monitor labeling for members of each drug class and help the agency review proposed labeling for new drugs and antibiotics. They will also help drug manufacturers prepare labeling for drugs they propose to market and help them determine whether the labeling for their marketed products is in compliance with legal requirements. Finally, class labeling will be most helpful to health care professionals who prescribe and dispense prescription drug products. Because class labeling contains information about each member of the drug class, its use will help prescribers and dispensers recognize similarities between drug products and will help them focus their attention upon the actual differences between the products. Although most information now in product-specific and generic labeling applies to each member of the drug class, similarities and differences among the drugs and drug products in the class are not identified. Thus, prescribers and dispensers must now compare the labeling for members of a drug class to determine the similarities and differences among the products in the class. The use of class labeling will eliminate the need for such comparisons.

The guideline that is the subject of this notice is intended to provide class labeling for the single-entity barbiturate drug class. FDA finds that this guideline is appropriate as the basis for labeling for the following drugs in the single-entity bartiburate drug class and in the dosage forms identified in parentheses:

Amobarbital (oral)
Amobarbital sodium (oral, intramuscular, and intravenous)
Aprobarbital (oral)

Butabarbital sodium (oral)
Hexobarbital (oral)
Mephobarbital (oral)
Methbarbital (oral)
Pentobarbital sodium (oral, rectal, intramuscular, and intravenous)
Phenobarbital (oral)
Phenobarbital sodium (oral, rectal, subcutaneous, intramuscular, and intravenous)
Secobarbital (oral)
Secobarbital sodium (oral, rectal, intramuscular, and intravenous)
Talbutal (oral)

The publication of this guideline is part of a larger effort by FDA to develop guideline professional labeling for classes of prescription drug products. In 1975, FDA awarded a contract to the American Society of Hospital Pharmacists (ASHP) to develop draft labeling for the 20 classes of prescription drugs listed below. A copy of the contract has been placed on public display in the FDA Hearing Clerk's office, address given above.

Aminoglycosides
Androgens
Anorectics (nonamphetamines)
Anticoagulants—oral
Antidepressants
Antipsychotics
Barbiturates
Cardiac glycosides
Cephalosporins
Glucocorticoids
Insulins
Narcotic analgesics
Penicillins—G & V
Penicillins—penicillinase-resistant
Quinidine salts
Rauwolfia alkaloids
Sulfonamides
Tetracyclines
Thiazides
Thyroids

ASHP researched the scientific literature pertaining to each drug class and prepared draft labeling for the agency. The agency worked with ASHP to revise the drafts for the agency's use in developing class labeling guidelines. The literature reviews and draft labeling prepared by ASHP under the contract provide a firm foundation for the agency's development of guideline labeling for each drug class.

In 1978 the agency awarded a second contract to the National Medical Advisory Service to develop draft labeling for 12 additional classes of prescription drugs. A copy of the contract has been placed on public display in the FDA Hearing Clerk's office, address given above. The following 12 classes are included under that contract:

Anesthetics—local
Anticholinergics—centrally active
Anticholinergics—synthetic
Antihistamines
Benzodiazepines
Corticosteroids—topical
Diagnostic intravenous radiopaques
Diagnostic oral radiopaques
Erythromycin
Neuromuscular blocking drugs
Penicillin—semi-synthetic
Potassium preparations

In 1979, products in the 32 drug classes accounted for more than 500 million prescriptions and more than $2 billion in retail costs to consumers of prescription drugs. (See the FDA Summary of IMS America, Ltd. Data on Survey of Prescription Drugs Dispensed in Retail Pharmacies for the Year 1979; a copy of which has been placed on public display in the FDA Hearing Clerk's office, address given above.)

This notice is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline is assured that his or her conduct is acceptable to the agency. The agency advises that the class labeling guideline for single-entity barbiturate drug products complies with the prescription drug labeling regulations in §§ 201.56, 201.57, and 201.100 and may be relied upon by any person to meet those requirements. Under the provisions of § 314.8(d) (21 CFR 314.8(d)), the guideline labeling may be used before approval of a supplement to a new drug application. A person may choose to use alternative labeling statements that are not provided for in the guideline. If a person chooses to depart from the guideline, he or she may discuss the matter further with the agency to prevent expenditure of money and effort for labeling that the agency may later determine to be unacceptable.

Effective November 18, 1980, a person may adopt the class labeling guideline for single-entity barbiturate prescription drug labeling requirements. Interested persons may submit written comments on the guideline to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Comments will be considered in determining whether further amendments to or revisions of the guideline are warranted. Comments should be in four copies except that individuals may submit single copies, identified with the Hearing Clerk docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Hearing Clerk's office between 9 a.m. and 4 p.m., Monday through Friday.

The class labeling guideline for the professional labeling of single-entity barbiturate drug products follows:

Barbiturate Class Labeling

Description. The barbiturates are nonselective central nervous system depressants which are primarily used as sedative hypnotics and also anticonvulsants in sybhypnotic doses (Ref. 1). The barbiturates and their sodium salts are subject to control under the Federal Controlled Substances Act. The barbiturates included in this class are:

Name of drug	Route	Dosage form	DEA* schedule
Amobarbital	Oral	Tablet, elixir	II
Amobarbital sodium	Oral	Capsule	II
Do	IM, IV	Injectable	II
Aprobarbital	Oral	Elixir	III
Butabarbital sodium	Oral	Elixir, tablet, capsule	III
Hexobarbital	Oral	Tablet	III
Mephobarbital	Oral	Tablet	IV
Metharbital	Oral	Tablet	III
Pentobarbital	Oral	Elixir	II
Pentobarbital sodium	Oral	Capsule, elixir	II
Do	Rectal	Suppository	III
Do	IM, IV	Injectable	II
Phenobarbital	Oral	Elixir, tablet	IV
Phenobarbital sodium	Oral	Tablet	IV
Do	Rectal	Suppository	IV
Do	IM, IV	Injectable	IV
Secobarbital	Oral	Elixir	II
Secobarbital sodium	Oral	Capsule	II
Do	Rectal	Suppository	III
Do	IM, IV	Injectable	II
Talbutal	Oral	Tablet	III

*Drug Enforcement Administration.

The sodium salts of amobarbital, pentobarbital, phenobarbital, and secobarbital are available as sterile parenteral solutions.

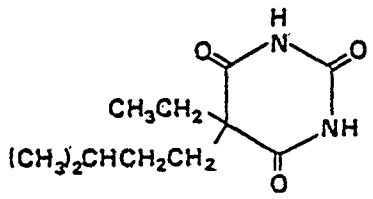
Barbiturates are substituted pyrimidine derivatives in which the basic structure common to these drugs is barbituric acid, a substance which has no central nervous system (CNS) activity. CNS activity is obtained by substituting alkyl, alkenyl, or aryl groups on the pyrimidine ring (Ref. 1). (Additional information as required by 21 CFR 201.57 will be supplied by the manufacturer or distributor.)

Structural formulas for this class follow:

BILLING CODE 4110-03-M

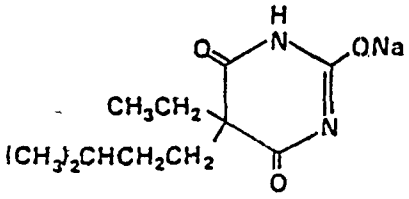
STRUCTURAL FORMULAS

AMOBARBITAL



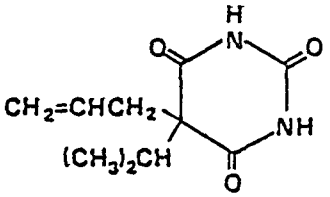
$C_{11}H_{18}N_2O_3$ 226.27 [CAS 57-43-2]
5-Ethyl-5-isopentylbarbituric acid

AMOBARBITAL SODIUM



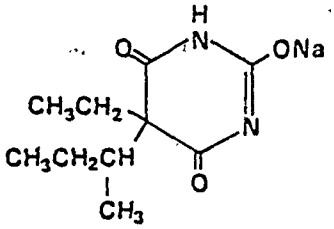
$C_{11}H_{17}N_2NaO_3$ 248.26 [CAS 64-43-7]
Sodium 5-ethyl-5-isopentylbarbiturate

APROBARBITAL



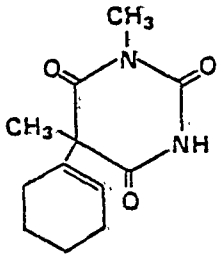
$C_{10}H_{14}N_2O_3$ 210.23 [CAS 77-02-1]
5-allyl-5-isopropylbarbituric acid

BUTABARBITAL SODIUM



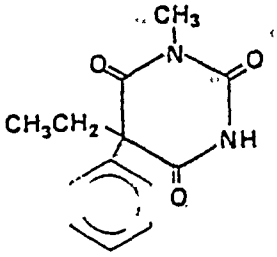
$C_{10}H_{15}N_2NaO_3$ 234.23 [CAS 143-81-7]
Sodium 5-sec-butyl-5-ethylbarbiturate

HEXOBARBITAL



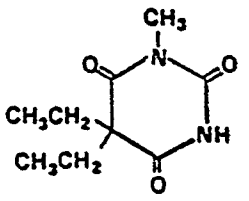
$C_{12}H_{16}N_2O_3$ 236.26 [CAS 56-29-1]
5-(1-cyclohexen-1-yl)-1,5-dimethylbarbituric acid

MEPHOBARBITAL



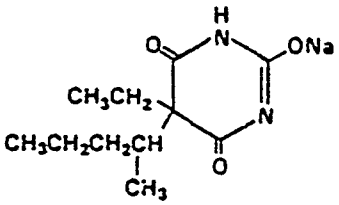
$C_{13}H_{14}N_2O_3$ 246.27 [CAS 115-38-8]
5-Ethyl-1-methyl-5-phenylbarbituric acid

METHARBITAL



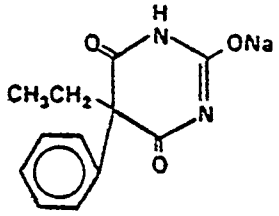
$C_{9}H_{14}N_{2}O_{3}$ 198.22 [CAS 50-11-3]
5,5-Diethyl-1-methylbarbituric acid

PENTOBARBITAL SODIUM



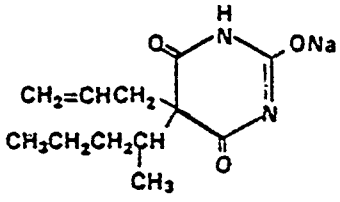
$C_{11}H_{17}N_{2}NaO_{3}$ 248.26 [CAS 57-33-0]
Sodium 5-ethyl-5-(1-methylbutyl) barbiturate

PHENOBARBITAL SODIUM



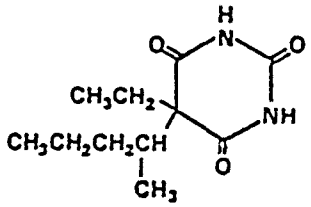
$C_{12}H_{11}N_{2}NaO_{3}$ 254.22 [CAS 57-30-7]
Sodium 5-ethyl-5-phenylbarbiturate

SECOBARBITAL SODIUM



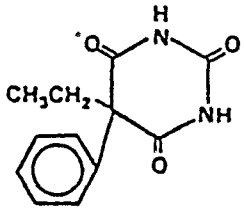
$C_{12}H_{17}N_{2}NaO_{3}$ 260.27 [CAS 309-43-3]
Sodium 5-allyl-5-(1-methylbutyl) barbiturate

PENTOBARBITAL



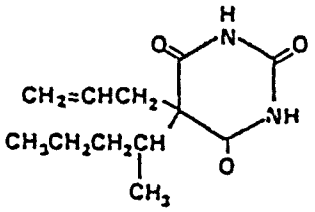
$C_{11}H_{18}N_{2}O_{3}$ 226.27 [CAS 76-74-4]
5-Ethyl-5-(1-methylbutyl) barbituric acid

PHENOBARBITAL



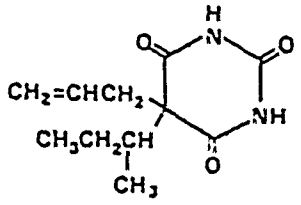
$C_{12}H_{12}N_{2}O_{3}$ 232.24 [CAS 50-06-6]
5-Ethyl-5-phenylbarbituric acid

SECOBARBITAL



$C_{12}H_{18}N_{2}O_{3}$ 238.29 [CAS 76-73-3]
5-Allyl-5-(1-methylbutyl) barbituric acid

TALBUTAL



$C_{10}H_{16}N_{2}O_{3}$ 224.26 [CAS 115-44-6]
5-Allyl-5-sec-butylbarbituric acid

BILLING CODE 4110-03-C

Clinical Pharmacology

Barbiturates are capable of producing all levels of CNS mood alteration from excitation to mild sedation, to hypnosis, and deep coma. Overdosage can produce death. In high enough therapeutic doses, barbituates induce anesthesia (Refs. 1 and 2).

Barbiturates depress the sensory cortex, decrease motor activity, alter cerebellar function, and produce drowsiness, sedation, and hypnosis.

Barbiturate-induced sleep differs from physiological sleep. Sleep laboratory studies have demonstrated that barbiturates reduce the amount of time spent in the rapid eye movement (REM) phase of sleep or dreaming stage. Also, Stages III and IV sleep are decreased (Refs. 1, 3, 4, and 5). Following abrupt cessation of barbiturates used regularly, patients may experience markedly increased dreaming, nightmares, and/or insomnia. Therefore, withdrawal of a single therapeutic dose over 5 or 6 days has been recommended to lessen the REM rebound and disturbed sleep which contribute to drug withdrawal syndrome (for example, decrease the dose from 3 to 2 doses a day for 1 week) (Ref. 4).

In studies, secobarbital sodium and pentobarbital sodium have been found to lose most of their effectiveness for both inducing and maintaining sleep by the end of 2 weeks of continued drug administration even with the use of multiple doses (Refs. 3, 4, 6, and 7). As with secobarbital sodium and pentobarbital sodium, other barbiturates might be expected to lose their effectiveness for inducing and maintaining sleep after about 2 weeks. The short-, intermediate-, and, to a lesser degree, long-acting barbiturates have been widely prescribed for treating insomnia. Although the clinical literature abounds with claims that the short-acting barbiturates are superior for producing sleep while the intermediate-acting compounds are more effective in maintaining sleep, controlled studies have failed to demonstrate these differential effects (Ref. 8). Therefore, as sleep medications, the barbiturates are of limited value beyond short-term use (Ref. 3).

Barbiturates have little analgesic action at subanesthetic doses (Ref. 1). Rather, in subanesthetic doses these drugs may increase the reaction to painful stimuli (Refs. 9 and 10). All barbiturates exhibit anticonvulsant activity in anesthetic doses. However, of the drugs in this class, only phenobarbital, mephobarbital, and metharbital are effective as oral anticonvulsants in subhypnotic doses (Refs. 1, 10, and 11).

Barbiturates are respiratory depressants. The degree of respiratory depression is dependent upon dose (Refs. 1, 10, and 12). With hypnotic doses, respiratory depression produced by barbiturates is similar to that which occurs during physiologic sleep with slight decrease in blood pressure and heart rate (Refs. 1 and 10).

Studies in laboratory animals have shown that barbiturates cause reduction in the tone and contractility of the uterus, ureters, and urinary bladder (Refs. 10 and 13). However, concentrations of the drugs required to produce this effect in humans are not reached with sedative-hypnotic doses (Refs. 1 and 10).

Barbiturates do not impair normal hepatic function, but have been shown to induce liver microsomal enzymes, thus increasing and/or altering the metabolism of barbiturates and other drugs (Refs. 1, 10, 14, 15 and 16). (See precautions—Drug Interactions below.)

Pharmacokinetics. Barbiturates are absorbed in varying degrees following oral, rectal, or parenteral administration. The salts are more rapidly absorbed than are the acids (Ref. 17). The rate of absorption is increased if the sodium salt is ingested as a dilute solution or taken on an empty stomach (Refs. 17 and 18).

The onset of action for oral or rectal administration varies from 20 to 60 minutes. For IM administration, the onset of action is slightly faster. Following IV administration, the onset of action ranges from almost immediately for pentobarbital sodium to 5 minutes for phenobarbital sodium. Maximal CNS depression may not occur until 15 minutes or more after IV administration for phenobarbital sodium (Ref. 1).

Duration of action, which is related to the rate at which the barbiturates are redistributed throughout the body, varies among persons and in the same person from time to time (Refs. 1, 19, and 20). In Table 1 below, the barbiturates are classified according to their duration of action. This classification should not be used to predict the exact duration of effect, but the grouping of drugs should be used as a guide in the selection of barbiturates.

No studies have demonstrated that the different routes of administration are equivalent with respect to bioavailability.

Table 1.—*Classification, Onset, and Duration of Action of Commonly used Barbiturates Taken Orally* (Ref. 21)

Classification	Onset of action	Duration of action
Long-acting Phenobarbital.	1 hr or longer.....	10 to 12 hr.
Intermediate Amobarbital Butabarbital.	¾ to 1 hr.....	6 to 8 hr.
Short-acting Pentobarbital Secobarbital.	10 to 15 min.....	3 to 4 hr.

Barbiturates are weak acids that are absorbed and rapidly distributed to all tissues and fluids with high concentrations in the brain, liver, and kidneys (Refs. 1, 10, 22, 23, and 24). Lipid solubility of the barbiturates is the dominant factor in their distribution within the body. The more lipid soluble the barbiturate, the more rapidly it penetrates all tissues of the body (Ref. 25). Barbiturates are bound to plasma and tissue proteins to a varying degree with the degree of binding increasing directly as a function of lipid solubility (Refs. 1, 10, 26, 27).

Phenobarbital has the lowest lipid solubility, lowest plasma binding, lowest brain protein binding, the longest delay in onset of activity, and the longest duration of action. At the opposite extreme is secobarbital which has the highest lipid solubility, plasma protein binding, brain protein binding, the shortest delay in onset of activity, and the shortest duration of action. Butabarbital is classified as an intermediate barbiturate (Ref. 28). The plasma half-life for some barbiturates in this class are listed in Table 2 below.

Table 2.—*Plasma Half-Life Values for Some Barbiturates in Humans*

Drug	Half-life (hours)				References
	Adult		Child/newborn		
	Range	(Mean)	Range	(Mean)	
Amobarbital	16 to 40	(25)	[1]	[1]	29, 30 and 31
Aprobarbital	14 to 34	(24)	[1]	[1]	32
Butabarbital	66 to 140	(100)	[1]	[1]	33
Hexobarbital	5		[1]	[1]	[2]1
Pentobarbital	15 to 50	[1]	[1]	[1]	1, 18 and 28.
Phenobarbital	53 to 118	(79)	60 to 180[4]	([4]110)	1, 32, 34, 35, 36 and 37
Secobarbital	15 to 40	(28)	[1]	[1]	1 and 28.

[1] No information available at this time.
[2] Pentobarbital seems to follow dose-dependent kinetics. When a 50-mg dose and a 100-mg dose were used in subjects, the mean half-life of elimination was 50 hours and 22 hours, respectively
[3] Limited information as reported in the literature.
[4] Half-life values were determined for newborn age being defined as 48 hours or less.

Data are inadequate to provide information on the half-life of the following drugs: mephobarbital, metharbital, and talbutal.

Barbiturates are metabolized primarily by the hepatic microsomal enzyme system, and the metabolic products are excreted in the urine, and less commonly, in the feces. Approximately 25 to 50 percent of a dose of aprobarbital or phenobarbital is eliminated unchanged in the urine, whereas the amount of other barbiturates excreted unchanged in the urine is negligible. The excretion of unmetabolized barbiturate is one feature that distinguishes the long-acting category from those belonging to other categories which are almost entirely metabolized (Ref. 28). The inactive metabolites of the barbiturates are excreted as conjugates of glucuronic acid (Refs. 1 and 39).

Indications and Usage

1. *Oral and parenteral.*

a. Sedatives.

b. Hypnotics, for the short-term treatment of insomnia, since they appear to lose their effectiveness for sleep induction and sleep maintenance after 2 weeks (See CLINICAL PHARMACOLOGY above).

c. Preanesthetics.

d. Long-term anticonvulsants, (phenobarbital, mephobarbital, and metharbital) for the treatment of generalized tonic-clonic and cortical focal seizures. And, in the emergency control of certain acute convulsive episodes, e.g., those associated with status epilepticus, cholera, eclampsia, meningitis, tetanus, and toxic reactions to strychnine or local anesthetics. Phenobarbital sodium may be administered IM or IV as an anticonvulsant for emergency use. When administered IV, it may require 15 or more minutes before reaching peak concentrations in the brain. Therefore, injecting phenobarbital sodium until the convulsions stop may cause the brain level to exceed that required to control the convulsions and lead to severe barbiturate induced depression.

2. *Rectal.* Barbiturates administered rectally are absorbed from the colon and are used occasionally in infants for prolonged convulsive states, or when oral or parenteral administration may be undesirable. If the rectal form is not available, the soluble sodium salt may be incorporated in a retention enema.

Contraindications

Barbiturates are contraindicated in patients with known barbiturate sensitivity. Barbiturates are also contraindicated in patients with a history of manifest or latent porphyria.

Warnings

1. *Habit forming.* Barbiturates may be habit forming. Tolerance, psychological and physical dependence may occur with continued use (Refs. 10, 40, 41, 42, 43, and 44). (See DRUG ABUSE AND DEPENDENCE below and PHARMACOKINETICS above.) Patients who have psychological dependence on barbiturates may increase the dosage or decrease the dosage interval without consulting a physician and may subsequently develop a physical dependence on barbiturates. To minimize the possibility of overdosage or the development of dependence, the prescribing and dispensing of sedative-hypnotic barbiturates should be limited to the amount required for the interval until the next appointment. Abrupt cessation after prolonged use in the dependent person may result in withdrawal symptoms, including delirium, convulsions, and possibly death (Refs. 44 and 45). Barbiturates should be withdrawn gradually from any patient known to be taking excessive dosage over long periods of time (Refs. 46 and 47). (see DRUG ABUSE AND DEPENDENCE below).

2. *IV administration.* Too rapid administration may cause respiratory depression, apnea, laryngospasm, or vasodilation with fall in blood pressure.

3. *Acute or chronic pain.* Caution should be exercised when barbiturates are administered to patients with acute or chronic pain, because paradoxical excitement could be induced or important symptoms could be masked. However, the use of barbiturates as sedatives in the postoperative surgical and as adjuncts to cancer chemotherapy is well established.

4. *Use in pregnancy.* Barbiturates can cause fetal damage when administered to a pregnant woman. Retrospective, case-controlled studies have suggested a connection between the maternal consumption of barbiturates and a higher than expected incidence of fetal abnormalities (Refs. 48 and 49). Following oral or parenteral administration, barbiturates readily cross the placental barrier and are distributed throughout fetal tissues with highest concentrations found in the placenta, fetal liver, and brain. Fetal blood levels approach maternal blood levels following parenteral administration (Refs. 1, 10, 50, and 51).

Withdrawal symptoms occur in infants born to mothers who receive barbiturates throughout the last trimester of pregnancy (Refs. 52 and 53). (See DRUG ABUSE AND DEPENDENCE below.) If this drug is used during pregnancy, or if the patient becomes pregnant while taking this drug, the patient should be apprised of the potential hazard to the fetus.

5. *Synergistic effects.* The concomitant use of alcohol or other CNS depressants may produce additive CNS depressant effects (Refs. 54 and 55).

Precautions

General. Barbiturates may be habit forming. Tolerance and psychological and physical dependence may occur with continuing use (Refs. 10, 41, 42, and 43). (See DRUG ABUSE AND DEPENDENCE below.) Barbiturates should be administered with caution, if at all, to patients who are mentally depressed, have suicidal tendencies, or a history of drug abuse (Ref. 5).

Elderly or debilitated patients may react to barbiturates with marked excitement, depression, and confusion (Refs. 5 and 56). In some persons, barbiturates repeatedly produce excitement rather than depression (Ref. 1).

In patients with hepatic damage, barbiturates should be administered with caution and initally in reduced doses. Barbiturates should not be administered to patients showing the

premonitory signs of hepatic coma (Refs. 1 and 14).

Parenteral solution of barbiturates are highly alkaline. Therefore, extreme care should be taken to avoid perivascular extravasation or intra-arterial injection. Extravascular injection may cause local tissue damage with subsequent necrosis; consequences of intra-arterial injection may vary from transient pain to gangrene of the limb (Refs. 57, 58, and 59). Any compliant of pain in the limb warrants stopping the injection.

Information for the patient. Practitioners should give the following information and instructions to patients receiving barbiturates.

1. The use of barbiturates carries with it an associated risk of psychological and/or physical dependence. The patient should be warned against increasing the dose of the drug without consulting a physician.

2. Barbiturates may impair mental and/or physical abilities required for the performance of potentially hazardous tasks (e.g., driving, operating mechinery, etc.) (Refs. 42 and 55).

3. Alcohol should not be consumed while taking barbiturates. Concurrent use of the barbiturates with other CNS depressants (e.g., alcohol, narcotics, tranquilizers, and antihistamines) may result in additional CNS depressant effects (Refs. 54, 55, and 60).

Laboratory tests. Prolonged therapy with barbiturates should be accompanied by periodic laboratory evaluation of organ systems, including hematopoietic, renal, and hepatic systems (See PRECAUTIONS (General) above and ADVERSE REACTIONS below).

Drug interactions. Most reports of clinically significant drug interactions ocurring with the barbiturates have involved phenobarbital. However, the application of these data to other barbiturates appears valid and warrants serial blood level determinations of the relevant drugs when there are multiple therapies.

1. *Anticoagulants.* Phenobarbital lowers the plasma levels of dicumarol (name previously used: bishydroxycoumarin) and causes a decrease in anticoagulant activity as measured by the prothrombin time (Ref. 61). Barbiturates can induce hepatic microsomal enzymes resulting in increased metabolism and decreased anticoagulant response of oral anticoagulants (e.g., warfarin (Refs. 15, 62, and 63), acenocoumarol, dicumarol, and phenprocoumon (Ref. 15)). Patients stabilized on anticoagulant therapy may require dosage adjustments if barbiturates are added to or withdrawn from their dosage regimen (Refs. 54 and 63).

2. *Corticosteroids.* Barbiturates appear to enhance the metabolism of exogenous corticosteroids probably through the induction of hepatic microsomal enzymes (Ref. 64). Patients stablized on cortixosteroid therapy may require dosage adjustments if barbiturates are added to or withdrawn from their dosage regimen.

3. *Griseofulvin.* Phenobarbital appears to interfere with the absorption of orally administered griseofulvin, thus decreasing its blood level (Refs. 65 and 66). The effect of the resultant decreased blood levels of griseofulvin on therapeutic response has not been established. However, it would be preferable to avoid concomitant administration of these drugs.

4. *Doxycycline.* Phenobarbital has been shown to shorten the half-life of doxycycline for as long as 2 weeks after barbiturate therapy is discontinued (Ref. 8).

This mechanism is probably through the induction of hepatic microsomal enzymes that metabolize the antibiotic. If phenobarbital and doxycycline are administered concurrently, the clinical response to doxycycline should be monitored closely (Ref. 67).

5. *Phenytoin, sodium valproate, valproic acid.* The effect of barbiturates on the metabolism of phenytoin appears to be variable. Some investigators report an accelerating effect, while others report no effect (Refs. 68, 69, and 70). Because the effect of barbiturates on the metabolism of phenytoin in not predictable, phenytoin and barbiturate blood levels should be monitored more frequently if these drugs are given concurrently (Ref. 55). Sodium valproate and valproic acid appear to decrease barbiturate metabolism; therefore, barbiturate blood levels should be monitored and appropriate dosage adjustments made as indicated.

6. *Central nervous system depressants.* The concomitant use of other central nervous system depressants, including other sedatives or hypnotics, antihistamines, tranquiliers, or alcohol, may produce additive depressant effects (Refs. 54, 55, and 60).

7. *Monoamine oxidase inhibitors (MAOI).* MAOI prolong the effects of barbiturates probably because metabolism of the barbiturate is inhibited (Ref. 8).

8. *Estradiol, estrone, progesterone and other steroidal hormones.* Pretreatment with or concurrent administration of phenobarbital may decrease the effect of estradiol by increasing its metabolism. There have been reports of patients treated with antiepileptic drugs (e.g., phenobarbital) who become pregnant while taking oral contraceptives. An alternate contraceptive method might be suggested to women taking phenobarbital (Ref. 55).

Carcinogenesis—1. *Animal data.* Phenobarbital sodium is carcinogenic in mice and rats after lifetime administration. In mice, it produced benign and malignant liver cell tumors. In rats, benign liver cell tumors were observed very late in life (Ref. 71).

2. *Human data.* In a 29-year epidemiological study of 9,136 patients who were treated on an anticonvulsant protocol which included phenobarbital, results indicated a higher than normal incidence of hepatic carcinoma. Previously, some of these patients were treated with thorotrast, a drug which is known to produce hepatic carcinomas. Thus, this study did not provide sufficient evidence that phenobarbital is carcinogenic in humans (Ref. 71).

A retrospective study of 84 children with brain tumors matched to 73 normal controls and 78 cancer controls (malignant disease other than brain tumors) suggested an association between exposure to barbiturates prenatally and an increased incidence of brain tumors (Ref. 72).

Pregnancy—1. *Teratogenic effects.* Pregnancy Category D—See WARNINGS—Use in Pregnancy above.

2. *Nonteratogenic effects.* Reports of infancts suffering from long-term barbiturate exposure in utero included the acute withdrawal syndrome of seizures and hyperirritability from birth to a delayed onset of up to 14 days. (See DRUG ABUSE AND DEPENDENCE below.)

Labor and delivery. Hypnotic doses of these barbiturates do not appear to significantly impair uterine activity during labor. Full anesthetic doses of barbiturates decrease the force and frequency of uterine contractions (Ref. 10). Administration of sedative-hypnotic barbiturates to the mother during labor may result in respiratory depression in the newborn (Ref. 1). Premature infants are particularly susceptible to the depressant effects of barbiturates. If barbiturates are used during labor and delivery, resuscitation equipment should be available.

Data are currently not available to evaluate the effect of these barbiturates when forceps delivery or other intervention is necessary. Also, data are not available to determine the effect of these barbiturates on the later growth, development, and functional maturation of the child.

Nursing mothers. Caution should be exercised when a barbiturate is administered to a nursing woman since

small amounts of barbiturates are excreted in the milk (Ref. 10).

Adverse Reactions

The following adverse reactions and their incidence were compiled from surveillance of thousands of hospitalized patients. Because such patients may be less aware of certain of the milder adverse effects of barbiturates, the incidence of these reactions may be somewhat higher in fully ambulatory patients (Refs. 73, 74, and 75).

More than 1 in 100 patients. The most common adverse reaction estimated to occur at a rate of 1 to 3 patients per 100 is: *Nervous system:* Somnolence.

Less than 1 in 100 patients. Adverse reactions estimated to occur at a rate of less than 1 in 100 patients listed below, grouped by organ system, and by decreasing order of occurrence are:

Nervous system: Agitation, confusion, hyperkinesia, ataxia, CNS depression, nightmares, nervousness, psychiatric disturbance, hallucinations, insomnia, anxiety, dizziness, thinking abnormality.

Respiratory system: Hypoventilation, apnea.

Cardiovascular system: Bradycardia, hypotension, syncope.

Digestive system: Nausea, vomiting, constipation.

Other reported reactions: Headache, injection site reactions, hypersensitivity reactions (angioedema, skin rashes, exfoliative dermatitis), fever, liver damage, megaloblastic anemia following chronic phenobarbital use.

Drug Abuse and Dependence

Barbiturates may be habit forming: Tolerance, psychological dependence, and physical dependence may occur especially following prolonged use of high doses of barbiturates (Refs. 41 and 42). Daily administration in excess of 400 milligrams (mg) of pentobarbital or secobarbital for approximately 90 days is likely to produce some degree of physical dependence (Ref. 10). A dosage of from 600 to 800 mg taken for at least 35 days is sufficient to produce withdrawal seizures (Ref. 47). The average daily dose for the barbiturate addict is usually about 1.5 grams (Ref. 19). As tolerance to barbiturates develops, the amount needed to maintain the same level of intoxication increases; tolerance to a fatal dosage, however, does not increase more than two-fold. As this occurs, the margin between an intoxicating dosage and fatal dosage becomes smaller (Ref. 8).

Symptoms of acute intoxication with barbiturates include unsteady gait, slurred speech, and sustained nystagmus. Mental signs of chronic intoxication include confusion, poor judgment, irritability, insomnia, and somatic complaints (Ref. 8).

Symptoms of barbiturate dependence are similar to those of chronic alcoholism (Ref. 60). If an individual appears to be intoxicated with alcohol to a degree that is radically disporportionate to the amount of alcohol in his or her blood the use of barbiturates should be suspected. The lethal dose of a barbiturate is far less if alcohol is also ingested (Ref. 8).

The symptoms of barbiturate withdrawal can be severe and may cause death (Refs. 10 and 41). Minor withdrawal symptoms may appear 8 to 12 hours after the last dose of a barbiturate. These symptoms usually appear in the following order: anxiety, muscle twitching, tremor of hands and fingers, progressive weakness, dizziness, distortion in visual perception, nausea, vomiting, insomnia, and orthostatic hypotension (Refs. 42, 44, and 76). Major withdrawal symptoms (convulsions and delirium) may occour within 16 hours and last up to 5 days after abrupt cessation of these drugs (Refs. 45 and 77). Intensity of withdrawal symptoms gradually declines over a period of approximately 15 days (Ref. 45). Individuals susceptible to barbiturate abuse and dependence include alcoholics and opiate abusers, as well as other sedative-hypnotic and amphetamine abusers.

Drug dependence to barbiturates arises from repeated administration of a barbiturate or agent with barbiturate-like effect on a continuous basis, generally in amounts exceeding therapeutic dose levels. The characteristics of drug dependence to barbiturates include: (a) a strong desire or need to continue taking the drug; (b) a tendency to increase the dose; (c) a psychic dependence on the effects of the drug related to subjective and individual appreciation of those effects; and (d) a physical dependence on the effects of the drug requiring its presence for *maintenance of homeostasis* and resulting in a definite, characteristic, and self-limited abstinence syndrome when the drug is withdrawn (Ref. 78).

Treatment of barbiturate dependence consists of cautious and gradual withdrawal of the drug (Ref. 46). Barbiturate-dependent patients can be withdrawn by using a number of different withdrawal regiments. In all cases withdrawal takes an extended period of time. One method involves substituting a 30-mg dose of phenobarbital for each 100- to 200-mg dose of barbiturate that the patient has been taking. The total daily amount of phenobarbital is then administered in 3 to 4 divided doses, not to exceed 60 mg daily. Should signs of withdrawal occur on the first day of treatment, a loading dose of 100 to 200 mg of phenobarbital may be administered IM in addition to the oral dose. After stablization on phenobarbital, the total daily dose is decreased by 30 mg a day as long as withdrawal is proceeding smoothly (Refs. 8, 46, and 47). A modification of this regimen involves initiating treatment at the patient's regular dosage level and decreasing the daily dosage by 10 percent if tolerated by the patient (Ref. 76).

Infants physically dependent on barbiturates may be given phenobarbital 3 to 10 mg/kg/day. After withdrawal symptoms (hyperactivity, disturbed sleep, tremors, hyperreflexia) are relieved, the dosage of phenobarbital should be gradually decreased and completely withdrawn over a 2-week period (Ref. 53).

Overdosage

The toxic dose of barbiturates varies considerably. In general, an oral dose of 1 gram of most barbiturates produces serious poisoning in an adult. Death commonly occurs after 2 to 10 grams of ingested barbiturate (Refs. 1 and 79). Barbiturate intoxication may be confused with alcoholism, bromide intoxication, and with various neurological disorders (Ref. 41).

Acute overdosage with barbiturates is manifested by CNS and respiratory depression which may progress to Cheyne-Stokes respiration, areflexia, constriction of the pupils to a slight degree (though in severe poisoning they may show paralytic dilation), oliguria, tachycardia, hypotension, lowered body temperature, and coma. Typical shock syndrome (apena, circulatory collapse, respiratory arrest, and death) may occur.

In extreme overdose, all electrical activity in the brain may cease, in which case a "flat" EEG normally equated with clinical death cannot be accepted. This effect is fully reversible unless hypoxic damage occurs. Consideration should be given to the possibility of barbiturate intoxication even in situations that appear to involve trauma (Ref. 8).

Complications such as pneumonia, pulmonary edema, cardiac arrhythmias, congestive heart failure, and renal failure may occur. Uremia may increase CNS sensitivity to barbiturates if renal function is impaired (Refs. 1 and 79). Differental diagnosis should include hypoglycemia, head trauma, cerebrovascular accidents, convulsive states, and diabetic coma. Blood levels from acute overdosage for some barbiturates are listed in Table 3 below.

Treatment of overdosage is mainly supportive and consists of the following:

1. Maintenance of an adequate airway, with assisted respiration and oxygen administration as necessary.
2. Monitoring of vital signs and fluid balance.
3. If the patient is conscious and has not lost the gag reflex, emesis may be induced with ipecac. Care should be taken to prevent pulmonary aspiration of vomitus. After completion of vomiting, 30 grams activated charcoal in a glass of water may be administered.
4. If emesis is contraindicated, gastric lavage may be performed with a cuffed endotracheal tube in place with the patient in the face down position. Activated charcoal may be left in the emptied stomach and a saline cathartic administered.
5. Fluid therapy and other standard treatment for shock, if needed.
6. If renal function is normal, forced diuresis may aid in the elimination of the barbiturate. Alkalinization of the urine increases renal excretion of some barbiturates, especially phenobarbital, also aprobarbital, and mephobarbital (which is metabolized to phenobarbital).
7. Although not recommended as a routine procedure, hemodialysis may be used in severe barbiturate intoxications or if the patient is anuric or in shock.
8. Patient should be rolled from side to side every 30 minutes.
9. Antibiotics should be given if pneumonia is suspected.
10. Appropriate nursing care to prevent hypostatic pneumonia, decubiti, aspiration, and other complications of patients with altered states of consciousness (Refs. 36, 81, 82, and 83).

Dosage and Administration

Suggested doses of barbiturates for specific indications may be found in the Pediatric and Adult Dosage Information Tables 4 and 5 below. Dosages of barbiturates must be individualized with full knowledge of their particular characteristics and recommended rate of administration. Factors of consideration are the patient's age, weight, and condition. Parenteral routes should be used only when oral administration is impossible or impractical.

IM injection of the sodium salts of barbiturates should be made deeply into a large muscle, and a volume of 5 mL should not be exceeded at any one site because of possible tissue irritation. After IM injection of a hypnotic dose, the patient's vital signs should be monitored.

IV injection is restricted to conditions in which other routes are not feasible, either because the patient is unconscious (as in cerebral hemorrhage, eclampsia, or status epilepticus), or because the patient resists (as in delirium), or because prompt action is imperative. Slow IV injection is essential, and patients should be carefully observed during administration. This requires that blood pressure, respiration, and cardiac function be maintained, vital signs be recorded, and equipment for resuscitation and artificial ventilation be available (Ref. 84). The rate of IV injection for adults should not exceed 60 mg/min for phenobarbital sodium and 50 mg/15 sec for secobarbital sodium (Ref. 85).

Anticonvulsant use. A therapeutic anticonvulsant level of phenobarbital in the serum is 10 to 25 μg/mL (Refs. 37 and 86). To achieve the blood levels considered therapeutic in children, higher per-kilogram dosages are generally necessary for phenobarbital and most other anticonvulsants. In children and infants, phenobarbital at loading dose of 15 to 29 mg/kg produces blood levels of about 20 μg/mL shortly after administration (Ref. 87).

In status epilepticus, it is imperative to achieve therapeutic blood levels of a barbiturate (or other anticonvulsants) as rapidly as possible. When administered intravenously, phenobarbital sodium may require 15 minutes or more to attain peak concentrations in the brain. If phenobarbital sodium is injected continuously until the convulsions stop, the brain concentration would continue to rise and could eventually exceed that required to control the seizures. Because a barbiturate-induced depression may occur along with a postictal depression once the seizures are controlled, it is important, therefore, to use the minimal amount required, and to wait for the anticonvulsant effect to develop before administering a second dose (Ref. 1).

Phenobarbital has been used in the treatment and prophylaxis of febrile seizures. However, it has not been established that prevention of febrile seizures influences the subsequent development of epilepsy (Ref. 88).

Special patient population. Dosage should be reduced in the elderly or debilitated because these patients may be more sensitive to barbiturates. Dosage should be reduced for patients with impaired renal function or hepatic disease.

Inspection. Parenteral drug products should be inspected visually for particulate matter and discoloration prior to administration, whenever solution containers permit. Solutions for injection showing evidence of precipitation should not be used.

How Supplied

The manufacturer or distributor is responsible for the information contained in this section of the labeling.

Table 3.—*Concentration of Barbiturate in the Blood Versus Degree of CNS Depression* (Ref. 80)

Barbiturate	Onset/duration	Degree of depression in nontolerant persons*				
		1	2	3	4	5
Pentobarbital	Fast/short	≤2	0.5 to 3	10 to 15	12 to 25	15 to 40.
Secobarbital	Fast/short	≤2	0.5 to 5	10 to 15	15 to 25	15 to 40.
Amobarbital	Intermediate/intermediate.	≤3	2 to 10	30 to 40	30 to 60	40 to 80.
Butabarbital	Intermediate/intermediate.	≤5	3 to 25	40 to 60	50 to 80	60 to 100.
Phenobarbital	Slow/long	≤10	5 to 40	50 to 80	70 to 120	100 to 200.

*Categories of degree of depression in nontolerant persons:
1. Under the influence and appreciably impaired for purposes of driving a motor vehicle or performing tasks requiring alertness and unimpaired judgment and reaction time.
2. Sedated, therapeutic range, calm, relaxed, and easily aroused.
3. Comatose, difficult to arouse, significant depression of respiration.
4. Compatible with death in aged or ill persons or in presence of obstructed airway, other toxic agents, or exposure to cold.
5. Usual lethal level; the upper end of the range includes those who received some supportive treatment.

Table 4.—*Barbiturate Pediatric Dosage Information recommended by the American Academy of Pediatrics (Ref 89)*

[Intended only as a guide]

Drug	Route administration	Pediatric preoperative	Pediatric anticonvulsant [1]
Amobarbital	PO	2–6 mg/kg, maximum 100 mg	
Amobarbital sodium	IV	65–500 mg or 3–5 mg/kg [2]	
Butabarbital sodium	PO	2–6 mg/kg, maximum 100 mg	
Mephobarbital	PO		8–15 mg/kg
Pentobarbital sodium	PO, IM	2–6 mg/kg, maximum 100 mg	
	Rectal	30 mg (2 mo to 1 yr), 30–60 mg (1 to 4 yr), 60 mg (5 to 12 yr), 60–120 mg (12 to 14 yr)	
Phenobarbital	PO	1–3 mg/kg	
Phenobarbital sodium	PO, IM, IV	1–3 mg/kg	4–6 mg/kg/day for 7–10 days to blood level 10–15 μg/mL or 10–15 mg/kg/day.
	IV		For status: 15–20 mg/kg over 10–15 minutes.
Secobarbital sodium	PO	2–6 mg/kg, maximum 100 mg	
	IM	4–5 mg/kg	
	Rectal	15–60 mg [2] (up to 6 mo), 60 mg [2] (6 mo to 3 yr), 60–120 mg [2] (3 yr)	

[1] All should be adjusted to blood levels measured as phenobarbital
[2] Dependent upon patient's condition and desired level of sedation

Table 5.—*Barbiturate Adult Dosage Information (Refs 90 and 91)*

[Intended only as a guide]

Drug	Route	Daytime sedation	Bedtime hypnotic	Preoperative sedation	Anticonvulsant
I. More commonly used:					
Pentobarbital	PO	20 mg 3–4 times daily	100 mg		
Pentobarbital sodium	PO	20 to 40 mg 2–3 times daily	100 mg		
	IM		150 to 200 mg		
	IV		70 kg adult, 100 mg initially		
Phenobarbital	PO	30 to 120 mg daily in 2–3 divided doses	100 to 320 mg		50 to 100 mg 2–3 times daily
Phenobarbital sodium	IM, IV	30 to 120 mg daily in 2–3 divided doses.	100 to 320 mg	IM only 100 to 200 mg 60–90 min before surgery	Status epilepticus: 200 repeated in 6 hr as necessary.
Secobarbital	PO		100 mg	200 to 300 mg 1–2 hr before surgery	
Secobarbital sodium	PO		100 mg	200 to 300 mg 1–2 hr before surgery	
	IM		100 to 200 mg	Dentistry 1 mg per lb body wt. For light sedation 0.5 to 0.75 mg per lb 10–15 min before procedure	
	IV		50 to 250 mg	Dentistry (prior to nerve block procedure 100–150 mg.	Tetanus: 2.5 mg per lb body wt repeated every 3–4 hr as needed.
	Rectal	120 to 200 mg daily in 3 divided doses.	120 to 200 mg		
II. Less comonly used:					
Amobarbital	PO	50 to 300 mg daily in divided doses.	65 to 200 mg		
Amobarbital sodium	PO	50 to 300 mg daily in divided doses	65 to 200 mg		
	IM, IV	30 to 50 2–3 times daily	65 to 200 mg		
Aprobarbital	PO	40 mg 3 times daily	40 to 160 mg		
Butabarbital sodium	PO	15 to 30 mg 3–4 times daily	50 to 100 mg	50 to 100 mg 60–90 minutes before surgery	
Hexobarbital	PO	250 mg repeated as needed	250 to 500 mg		
Mephobarbital	PO	90 to 400 mg in 3–4 divided doses			200 mg at bedtime to 600 mg daily in divided doses.
Metharbital	PO				Usual dose: 100 mg 1–3 times daily. Dose range: 100 to 800 mg daily.
Talbutal	PO	30 to 60 mg 2–3 times daily	120 mg 15–30 min before retiring		

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Dated: November 5, 1980.

Jere E. Goyan,

Commissioner of Food and Drugs.

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November 18, 1980

Part IV

Department of Energy

Economic Regulatory Administration

Voluntary Guideline for the Advertising Standard Under the Public Utility Regulatory Policies Act of 1978; Proposed Guideline and Public Hearing

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-R-80-39]

Voluntary Guideline for the Advertising Standard Under the Public Utility Regulatory Policies Act of 1978; Proposed Guideline and Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Guideline and Public Hearing.

SUMMARY: Title I of the Public Utility Regulatory Policies Act of 1978 (PURPA) establishes certain Federal purposes and policy standards for the regulation of electric utilities and imposes a set of obligations upon State regulatory authorities and certain nonregulated utilities with respect to the standards established by sections 111 and 113.

Pursuant to section 131 of PURPA, the Secretary of Energy may prescribe voluntary guidelines respecting consideration of the standards for electric utilities. The Appendix of this Notice is the proposed voluntary guideline respecting the advertising standard established by section 113(b)(5) of PURPA. Written comments will be received and a public hearing will be held with respect to the proposed guideline.

DATE: Written comments must be received by January 19, 1981, 4:30 p.m., e.d.t. A public hearing will be held beginning at 9:30 a.m., local time, on the date and location specified below:

City	Hearing date	Request to testify to be received by—	Submit request to testify to—	Hearing location
Washington, D.C.	Dec. 17, 1980	Dec. 10, 1980	Lorrain Hall, DOE, ERA, Room B210, 2000 M St. NW., Washington, D.C. 20461. Telephone (202) 653-3984.	Room 2105, 2000 M St., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Stephen S. Skjei, Division of Regulatory Assistance, Office of Utility Systems, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room 4016D, Washington, D.C. 20461, telephone (202) 653-3913. William L. Webb, Office of Public Information, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, telephone (202) 653-4055.

Arthur Perry Bruder, Office of the General Counsel, Department of Energy, 1000 Independence Avene, SW., Room 1E-258, Washington, D.C. 20585, telephone (202) 252-9516. Cynthia Ford, Office of Public Hearings Management, Economic Regulatory Administration, Department of Energy, 2000 M Street, NW., Room B-210, Washington, D.C. 20461 telephone (202) 653-3971.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1978, the President signed into law the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*), as one part of the National Energy Act.

Section 113(b)(5) of PURPA establishes an advertising standard applicable to electric utilities. The electric utility advertising standard, which must be considered by State regulatory authorities and certain nonregulated utilities in a manner specified by PURPA, provides that—

> No electric utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditure by such utility for promotional or political advertising as defined in section 115(h).

Section 115(h) provides that for the purposes of section 113(b)(5)—

> (A) The term "advertising" means the commercial use, by an electric utility of any media, including newspaper, printed matter, radio, and television, in order to transmit a message to a substantial number of members of the public or to such utility's electric consumers.
>
> (B) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative or electoral matters, or with respect to any controversial issue of public importance.
>
> (C) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation of any appliance or equipment designed to use such utility's service.

Section 115(h) further stipulates that the terms "political advertising" and "promotional advertising" do not include:

> (A) Advertising which informs electric consumers how they can conserve energy or can reduce peak demand for electric energy,
>
> (B) Advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act,
>
> (C) Advertising regarding service interruptions, safety measures or emergency conditions,
>
> (D) Advertising concerning employment opportunities with such utility,
>
> (E) Advertising which promotes the use of energy efficient appliances, equipment or services, or
>
> (F) Any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon.

The Advertising Standard for electric utilities does not restrict the type of advertising a utility may undertake. Rather, this standard is concerned solely with whether direct or indirect expenditures for certain types of advertising may be recoverable from the utility's ratepayers.

II. Guideline Issues

In promulgating this guideline, DOE's main objective is to offer guidance on those provisions of the standard concerned (a) with conservation oriented advertising (PURPA sections 115(h)(2) (A) and (B)), and (b) with advertising which promotes the use of energy efficient equipment (PURPA section 115(h)(2)(E)). The guideline focuses on these provisions primarily because of DOE's interest in increased efforts to encourage energy conservation. In particular, DOE is committed to encourage utilities to expand their role so that the energy needs of their customers, and the Nation, may be met in the most efficient and least costly manner. The other provisions of the advertising standard are not directly addressed in this guideline because they are relatively straightforward and do not appear to require more specific Federal guidance at this tilme to achieve their purpose.

This guideline does not suggest the regulatory authority prohibit or restrict the type of advertising undertaken by utilities. Therefore, this guideline does not conflict with the recent U.S. Supreme Court decisions in (1) *Central Hudson Gas and Electric Corporation v. Public Service Commission of New York,* 48 U.S.L.W. 4783, June 20, 1980, which held that a ban on utility promotional advertising violates the First and Fourteenth Amendments, or (2) *Consolidated Edison Company of New York v. Public Service Commission of New York,* 48 U.S.L.W. 4776, June 20, 1980, which held that a ban on utility bill inserts discussing controversial issues of public policy violates the First and Fourteenth Amendments.

A. Conservation Advertising

Utility advertising which encourages the conservation of, or the reduction of peak demand for electricity is consistent with the three purposes of PURPA and

can lead to reduced consumption of scarce fossil fuels. Such advertising can take a variety of forms. It might encourage residential customers to insulate their homes or it might promote the use of electrical or other equipment which is primarily designed to reduce overall electric energy consumption or to shift consumption from peak to offpeak periods. In the long run, all customers can benefit from such advertising.

B. Advertising Which Promotes the Efficient Use of Energy

Utility advertising which encourages the purchase of energy efficient appliances, equipment or services is also consistent with the three purposes of PURPA. The cost-effectiveness of such devices may vary from utility to utility, depending on the fuels involved. Therefore, this type of advertising should be considerd by the State regulatory authority on a utility-specific basis.

III. The Proposed Guideline

Comments are invited on all aspects of the proposed guideline. The guideline, when promulgated in final form, will be advisory in nature and not legally binding. It will, however, consititute DOE policy respecting consideration of the Federal standard for advertising.

IV. Written Comments and Public Hearing Procedures

A. Written Comments

The public is invited to participate in this proceeding by submitting to DOE's Economic Regulatory Administration (ERA) information, views or arguments with respect to the proposal set forth in the Appendix to this Notice. Comments should be submitted by 4:30 p.m. January 19, 1981, to the Public Hearings Division, Economic Regulatory Administration, Room B-210, 200 M Street, N.W., Washington, D.C. 20461. Comments should be identified on the outside of the envelope with the designation: "Proposed Voluntary Guideline on Advertising, Docket No. ERA-R-80-39". Fifteen copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, 1E-190, James Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585, and the ERA Office of Public Information, Room B-110, 2000 M Street, NW., Washington, D.C. 20461, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

Pursuant to the provisions of 10 CFR 1004.11 (44 FR 1908, January 8, 1979), any person submitting information which he or she believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy and fifteen copies from which information claimed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, DOE shall make its own determination with regard to any claim that information submitted be exempt from public disclosure.

B. Public Hearing

(1) *Procedures for Request to make Oral Presentation.* The time and place for the hearing are indicated in the "DATES" section of this Notice. Any person who has an interest in this proposed guideline or represents a person, group or class of persons that has an interest, may make a written request for an opportunity to speak at the public hearing. Requests to speak should be sent to the address shown in the "DATES" section and be received by December 10, 1980. The request should include a telephone number where the speaker may be contacted through the day before the hearing.

All persons participating in the hearing will be so notified on or before December 12, 1980. Speakers should submit 100 copies of their hearing testimony for distribution at the hearing by 4:30 p.m., December 16, 1980, to the Office of Public Hearings Management, U.S. Department of Energy, Room B-210, 2000 M Street, NW., Washington, D.C. 20461.

(2) *Conduct of the Hearing.* DOE reserves the right to select the persons to be heard at these hearings (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

A DOE official will be designated to preside at each of the hearings. These will not be judicial or evidentiary-type hearings. Questions may be asked only by those conducting the hearings, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any person at the hearings who wishes to ask a question may submit the question, in writing, to the presiding officer. The presiding officer will detemine whether these questions are relevant and whether time limitations permit them to be presented for answers. Any further procedural rules needed for the proper conduct of a hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearings, including the transcripts, will be retained by DOE and made available for inspection at the Freedom of Information Office, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, and at the Office Public Information, Economic Regulatory Adminstration, Room B-110, 2000 M Street, NW., Washington, D.C. 20461.

In the event that it becomes necessary to cancel a hearing, every effort will be made to publish advance notice of the cancellation in the Federal Register, and DOE will notify all persons scheduled to testify at the hearing.

Since it is generally not possible to give actual notice of cancellations or changes to persons not participants, persons desiring to attend a hearing are advised to contact DOE on the last working day before the hearing to confirm that it will be held as scheduled.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*); Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101 *et seq.*))

Issued in Washington, D.C., on November 10, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

Appendix.—PURPA Guideline Number 5: Advertising

A. Introduction

On November 8, 1978, the President signed into law the Public Utility Regulatory Policies Act of 1978 (PURPA), Pub. L. 95-617, 92 Stat. 3117 *et seq.* (16 U.S.C. 2601 *et seq.*) as one part of the National Energy Act.

Section 113(b)(5) of title I of PURPA establishes a standard for advertising for State regulatory authorities and certain nonregulated electric utilities. The standard provides that "no electric utility may recover from any person other than the shareholders (or other owners) of such utility any direct or indirect expenditures by such utility for promotional or political advertising as defined in section 115(h)."

Under section 115(h) of PURPA, advertising political advertising and promotional advertising, for the

purposes of section 113(b)(5) are defined as follows:

(1) The term "advertising" means the commercial use, by an electric utility, of any media, including newspaper, printed matter, radio and television, in order to transmit a message to a substantial number of members of the public or to such utility's electric consumers.

(2) The term "political advertising" means any advertising for the purpose of influencing public opinion with respect to legislative, administrative or electoral matters, or with respect to any controversial issue of public importance.

(3) The term "promotional advertising" means any advertising for the purpose of encouraging any person to select or use the service or additional service of an electric utility or the selection or installation or any appliance or equipment designed to use such utility's service.

(4) For purposes of section 113(b)(5), the terms "political advertising" and "promotional advertising" do not include—

"(A) Advertising which informs electric consumers how they can conserve energy or can reduce peak demand for electric energy,

(B) Advertising required by law or regulation, including advertising required under part 1 of title II of the National Energy Conservation Policy Act,

(C) Advertising regarding service interruptions, safety measures, or emergency conditions,

(D) Advertising concerning employment opportunities with such utility,

(E) Advertising which promotes the use of energy efficient appliances, equipment or services, or

(F) Any explanation or justification of existing or proposed rate schedules, or notifications of hearings thereon."

This guideline is limited to a discussion of the types of advertising set forth in (4)(A), (B) and (E) above.

B. Coverage

This guideline covers the PURPA standard on advertising and specifically addresses certain advertising direct or indirect expenditures which are exempt from the prohibitions established by the PURPA standard.

C. Definitions

As used in this guideline, except as otherwise specifically provided—

The term "electric utility" means any person, State agency, or Federal agency, which sells electric energy.

The term "evidentiary hearing" means—

(1) In the case of a State agency, a proceeding which (a) is open to the public, (b) includes notice to participants and an opportunity for such participants to present direct and rebuttal evidence and to cross-examine witnesses, (c) includes a written decision, based upon evidence appearing in a written record of the proceeding, and (d) is subject to judicial review;

(2) In the case of a Federal agency, a proceeding conducted as provided in section 554, 556, and 557 of title 5, United States Code; and

(3) In the case of a pending conducted by any entity other than a State or Federal agency, a proceeding which conforms, to the extent appropriate, with the requirements of subparagraph (1).

The term "Federal agency" means an executive agency (as defined in section 105 of title 5 of the United States Code).

The term "nonregulated electric utility" means any electric utility other than a State regulated electric utility.

The term "rate" means (a) any price, rate, charge, or classification made, demanded, observed, or received with respect to sale of electric energy by an electric utility to an electric consumer, (b) any rule, regulation, or practice respecting any such rate, charge, or classification, and (c) any contract pertaining to the sale of electric energy to an electric consumer.

The term "ratepayer" means any person, State agency, or Federal agency, which purchases electric energy in accordance with an approved rate schedule.

The term "rate schedule" means the designation of the rates which an electric utility charges for electric energy.

The term "State" means a State, the District of Columbia, and Puerto Rico.

The term "State agency" means a State, political subdivision thereof, and any agency or instrumentality of either.

The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy by any electric utility (other than such State agency), and in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority, such term means the Tennessee Valley Authority.

D. DOE Guidance

In general, the PURPA advertising standard, if implemented by a State regulatory authority or nonregulated utility, would prohibit the recovery from ratepayers of direct or indirect expenditures for either political or promotional advertising. Section 115(h)(2) contains several exceptions to or clarifications of this general prohibition. Certain of these exceptions deserve careful attention in light of their implications for national energy policy. These are:

(1) Conservation advertising (sections 115(h)(2)(A) and (B) of PURPA); and

(2) Advertising which promotes the efficient use of energy (section 115(h)(2)(E) of PURPA).

Both conservation advertising and advertising which promotes the efficient use of energy are consistent with the purposes of title I of PURPA. Both can lead to reduced consumption of scarce fossil fuels. These exceptions are the focus of this guideline because of DOE's interest in increased efforts to encourage energy conservation. In particular, DOE is committed to encourage utilities to expand their role so that the energy needs of their customers, and the Nation, may be met in the most efficient and least costly manner.

1. *Conservation Advertising.* Advertising which encourages electric consumers to conserve energy or reduce peak demand for electric energy is beneficial to the utility, the utility's ratepayers and is in the public interest. Such advertising can result in the conservation of scarce imported fossil fuels either through reduced consumption during peak periods or the development of alternative technologies, e.g., load management devices and solar hot water heaters.

One of the more effective forms of conservation advertising is that which provides information on alternative ways to weatherize buildings, on specific methods for reducing energy usage, and on the cost saving potential of specific solar alternatives as a supplement to electric energy. General statements which promote the utility's own image or its activities related to energy conservation do not inform consumers how to conserve energy. Therefore, advertising of this type may not be exempted from the PURPA prohibitions relating to promotional advertising.

A good example of informative advertising is that required under the Residential Conservation Service (RCS) Program (specifically mentioned in section 115(h)(2)(B) of PURPA). The RCS Program, which is mandatory for all covered electric utilities, requires these utilities to provide certain types of information about residential energy conservation and renewable resource measures to all residential customers. This information includes a list of suggested measures, and estimate of the

savings likely to result from their installation, an offer of an on-site energy audit and a list of qualified suppliers and contractors. Another example of informative advertising is that which emphasizes conservation opportunities that offer significant benefits at minimal cost.

Certain conservation oriented advertising may promote the purchase of electrical equipment used to shift the time period at which consumption occurs. Such advertising would encourage, among other things, reduced peak kilowatt consumption through the use of electric heat storage units, electric time clock control mechanisms, or other devices designed to limit or control maximum kilowatt demand. Such advertising is beneficial to the ratepayer since its objective is to reduce peak period demand, thus conserving scarce fossil fuels or lowering utility costs (and ratepayer bills) through the deferral of new plant construction.

2. *Advertising Which Promotes the Use of Energy Efficient Appliance, Equipment or Services.* This type of advertising may also be beneficial to the utility's ratepayers and in the public interest. It includes advertising which encourages the purchase of cost effective, efficient electric appliances to replace existing less efficient electric appliances, or advertising which promotes, the initial use of cost-effective, energy efficient appliances, equipment or services, e.g., heat pumps to replace less efficient or more costly types of heating equipment; electric equipment designed to supplement solar or other renewable resource systems; or electric water heaters designed to utilize waste heat from air conditioning systems.

Whether replacing other types of heating equipment with heat pumps will increase efficiency depends greatly on climate and other factors which vary substantially around the country. It should be recognized, for example, that conversions from oil heating to heat pumps might actually increase oil consumption in some regions. Therefore, it is appropriate that benefits to the ratepayers and the cost-effectiveness of these replacements be determined by the State regulatory authority or the nonregulated utility.

Advertising of energy efficient appliances is especially helpful to the electric consumer when it provides specific substantive information about the appliance, such as, appliance efficiency labeling and standards information and data regarding the life cycle costs of alternative appliances relative to the initial capital costs of such appliances.

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Federal Register

Tuesday
November 18, 1980

Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Housing—Federal Housing Commissioner

Mortgage Insurance and Home Improvement Loans; Changes in Maximum Mortgage Amounts

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203, 220, 221, 226, 227, 234, and 240

[Docket No. R-80-885]

Mortgage Insurance and Home Improvement Loans; Changes in Maximum Mortgage Amounts

AGENCY: Department of Housing and Urban Development (HUD), Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Interim rule.

SUMMARY: The Housing and Community Development Act of 1980 amended the National Housing Act to permit a change in the mortgage amounts under HUD's single family mortgage insurance programs.

EFFECTIVE DATE: November 18, 1980.

COMMENTS DUE: Comments must be received on or before January 19, 1981.

ADDRESS: Written comments should refer to the docket number and date and should be submitted to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

A copy of each communication will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John D. McNees, Deputy Assistant Secretary, Single Family Housing and Mortgagee Activities, Department of Housing and Urban Development, Room 9282, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-6675. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Housing and Community Development Act of 1980 was signed into law on October 8, 1980. Revisions are being made to Chapter II of the 24 CFR to change the maximum mortgage amounts for single family housing programs under Sections 203(b), and 220(d)(3)(A)(i), to reflect the new authorization. The maximum mortgage amounts under Sections 213, 222, 240, 244, 245(a), 245(b), 809, and 810 are incorporated by reference and continue to be those established for Section 203(b). This means that any of the programs stated above will utilize the increased mortgage amounts in designated areas, and otherwise the outstanding limits will apply. The maximum mortgage amount for Section 234(c) is also being revised and is listed separately.

Due to the regional differences in the cost of housing, the new provisions of the 1980 Act have provided for a more equitable means for establishing maximum mortgage amounts. Under this new authority, in areas where middle- and moderate-income persons have limited housing opportunities due to high prevailing housing sales prices, the maximum mortgage will be higher than those mortgage limits for areas where housing costs are not as great. Therefore, in areas where the high cost of housing is not considered a significant factor in determining the dollar limitation, the maximum mortgage amount will continue to be $67,500 for a one-family unit, $76,000 for a two-family unit, $92,000 for a three-family unit, and $107,000 for a four-family unit. In areas designated by the Commissioner as having limited housing opportunities, the formula set by statute for determining the maximum mortgage amount for a one-family unit is to be determined based on a level which does not exceed the lesser of (a) 133.33 percent of $67,500 ($90,000), or (b) 95 percent of the median sales price of a one-family residence in the area. The maximum mortgage amount for a two-family unit is based on a level which does not exceed the lesser of (a) 133.33 percent of $76,000 ($101,300), or 107 percent of the median sales price of a one-family residence in the area. The maximum mortgage amount for a three-family unit is based on a level which does not exceed the lesser of (a) 133.33 percent of $92,000 ($122,650), or 130 percent of the median sales price of a one-family residence in the area. The maximum mortgage amount for a four-family unit is based on a level which does not exceed the lesser of 133.33 percent of $107,000 ($142,650), or (b) 150 percent of the median sales price of a one-family residence in the area.

The formula for determining the maximum mortgage amount for mortgages insured under Section 234(c) has also been revised in the 1980 Act, with the same area designation as utilized under Section 203(b). The maximum mortgage amount for a one-family condominium continues to be $67,500 except in areas where limited housing opportunities for middle- and moderate-income persons exist, and the formula for determining the dollar limitation is a level which does not exceed the lesser of (a) 111 percent of $67,500 ($74,900), or (b) 95 percent of the median sales price of a one-family residence in the area.

To comply with the intent of the legislation, it is necessary for the Department to establish which areas are eligible for increases, as well as what the new maximum mortgage amount for these areas will be. These designations are the product of a Departmental review and analysis of recent year sales activity both nationally and in local housing markets which compared the base FHA mortgage limits and the patterns of sales prices in individual markets. Following the adjustments noted below, areas in which 95 percent of median sales price exceeded the base FHA mortgage limits were designated as ones in which middle- and moderate-income persons have limited housing opportunities due to high prevailing prices, and have received mortgage limit increases.

The primary data reference employed by HUD in the development of new area-wide limits was the Federal Home Loan Bank Board's (FHLBB's) survey of "Terms on Conventional Home Mortgages", the most comprehensive survey of home sales prices by local market areas presently available. From the survey, median sales price estimates by Standard Metropolitan Statistical Areas (SMSAs) and non-SMSA statewide areas were obtained for the period of September 1979 through August 1980. HUD adjusted these estimates, first to trend them forward to the effective program year (Fiscal Year 1981), and second, to correct for the absence of FHA and VA activity in the FHLBB survey data. Other data sources, including the FHA Homes Series, a HUD report of Section 203(b) new and existing home sales, the Bureau of Census Construction Report Series and the National Association of Realtor's Existing Home Sales Survey, were used to augment FHLBB home sales data in cases of underreporting by individual SMSAs in the FHLBB data base. In addition, these data sources were employed for the purpose of assessing the validity of FHLBB survey estimates in predicting home purchase opportunities available to middle- and moderate-income persons in individual housing markets. Thus, where FHLBB data supported a higher mortgage limit, but where FHA data indicated that substantial numbers of households were finding houses well within the FHA limits, a higher mortgage limit was not approved.

The basic geographic units for which new area-wide mortgage limits were developed and assigned are SMSAs and non-SMSA areas within state boundaries. However, where it was feasible to do so and consistent with the

statute's objectives, the Department combined data from two or more SMSAs or from SMSAs and non-SMSA areas to provide area-wide limits, thus reducing disparities between communities and simplifying the system for buyers, sellers, builders and mortgagees. Aggregate sales price data from contiguous SMSAs, or from SMSAs and non-SMSA areas on a HUD Field Office basis, were employed as a basis for mortgage limit assignments only where area housing markets are essentially homogeneous in character and where median home sales prices are comparable in amount.

In areas where middle- and moderate-income persons have limited housing opportunities due to high prevailing housing sales prices, an appendix is attached to the Section 203(b) regulations, and the Section 234(c) regulations identifying the maximum mortgage amount for the area. Any area not listed in the appendices will utilize the outstanding maximum mortgage amount of $67,500 (1-unit). Individuals who read the appendices will be able to determine what the maximum mortgage amounts for their area will be without reference to other publications.

In cases where interested parties determine that the designated maximum mortgage limits do not accurately reflect the extent to which middle- and moderate-income persons have limited housing opportunities in local market areas due to high prevailing housing sales prices, the parties may submit documented evidence in support of an alternative maximum mortgage limit. Such documentation should include local market sales price data for new and existing home sales covering a recent period of time (3 months or longer). Adjustments to mortgage limits will not be given to sub-market areas within SMSAs, or within non-SMSA state-wide areas. Requests for adjustments to maximum mortgage limits, together with the appropriate documentation, shall be submitted to the appropriate HUD Field Office for review and recommendation. Field Offices shall forward such requests, documentation and recommendations to the Assistant Secretary for Housing for determination.

The Secretary has determined that it is urgent that the benefits afforded by this provision of the Act be made available as soon as possible. Publishing a notice of proposed rulemaking and giving the public an opportunity to comment prior to the effective date of this regulation would cause a substantial delay in making the benefits available. A delay could cause unnecessary hardships to homebuyers who need to use the increased mortgage amounts which the Act provides. Therefore, the Secretary finds that notice and prior public procedure on this regulation would be contrary to the public interest. Since these regulations relieve restrictions contained in present regulations, it is necessary to accelerate the effective date as much as possible. However, an opportunity for public comment is being provided to be followed by issuance of a final rule. The Department is particularly interested in comments relating to: (1) alternative data sources; (2) alternative area designations (i.e. state-wide, larger than SMSA, smaller than SMSA); (3) particular groupings of SMSAs used; and (4) the basis for granting appeals. Accordingly, these amendments will become effective November 18, 1980.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement Section 102(2)(c) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address set forth above. In addition, the Chairmen and Ranking Minority Members of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives have waived the delay of effective date required by Section 7(o)(3) of the Department of Housing and Urban Development Act and the prepublication review of this rule provided for in Section 7(o)(2) of the Department of Housing and Urban Development Act.

This rule is not listed in the Department's seminannual agenda of significant rules, published pursuant to Executive Order 12044, as extended by Executive Order 12221.

The following numbers identify the programs, as listed in the Catalog of Federal Domestic Assistance, affected by the regulation change.

Section 203(b)=14.117 Mortgage Insurance—Homes (F), =14.118 Mortgage Insurance—Homes for Certified Veterans (F)
Section 213=14.126 Mortgage Insurance—Management Type Cooperative Projects (F)
Section 220=14.122 Mortgage Insurance—Homes In Urban Renewal Areas (F)
Section 221(d)(2)=14.120 Mortgage Insurance—Homes for Low and Moderate Income Families (F)
Section 222=14.166 Mortgage Insurance—Servicemen (F)
Section 234(c)=14.133 Mortgage Insurance—Purchase of Units in Condominiums (F)
Section 240=14 130 Mortgage Insurance—Purchase by Homeowners of the Fee Simple Title by Lessors (F)
Section 244=14.161 Single Family Mortgage Coinsurance (F)
Section 245(a) and 245(b)=14.159 Section 245 Graduated Payment Mortgage Program (F)
Section 809=14.167 Mortgage Insurance—Armed Services Housing—Civilian Employees (F)
Section 810=14.168 Armed Services Housing—Impacted Areas (F)

Accordingly, Chapter II is amended as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME MORTGAGE IMPROVEMENT LOANS

Subpart A—Eligibility Requirements

The following new Section is added and designated as § 203.18b.

§ 203.18b Increased mortgage amount.

(a) The dollar limitations specified in § 203.18(a) are increased to the amounts set forth in Appendix A to this part, for the geographical areas indicated in the Appendix. In any geographical area where the Commissioner finds that middle- and moderate-income persons have limited housing opportunities due to the high prevailing housing sales prices, the Commissioner may change the dollar limitations specified in § 203.18(a) or in Appendix A to the extent he/she deems necessary by publishing the dollar limitation in the Federal Register.

(b) The increased dollar limitation shall not exceed the lesser of (1) 133.33 percent of the dollar limitation specified in § 203.18(a), or (2) the following percentage of the median one-family house price in the area as determined by the Commissioner.

(i) 95 percent for a one-family residence.

(ii) 107 percent for a two-family residence.

(iii) 130 percent for a three-family residence.

(iv) 150 percent for a four-family residence.

Section 203.43c paragraphs (a) and (g) are revised to read as follows:

§ 203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.

* * * * *

(a) The provisions of §§ 203.16a, 203.17, 203.18, 203.18a, 203.18b, 203.23, 203.24, 203.26, 203.37, 203.38, 203.43b, 203.44, 203.45, and 203.50 of this part shall not apply to mortgages insured under Section 203(n) of the National Housing Act.

* * * * *

(g) The mortgage shall not exceed the balance remaining after subtracting from the amount determined under §§ 203.18(a), 203.18a, and 203.18b of this part an amount equal to the portion of the unpaid balance of the blanket mortgage covering the cooperative development which is attributable to the dwelling unit the mortgagor is entitled to occupy as of the date the mortgage is accepted for insurance.

* * * * *

Section 203.44 is amended by revising paragraph (g) to read as follows:

§ 203.44 Eligibility of open-end advances.

* * * * *

(g) The amount of any such advance (computed in even dollar amounts) when added to the unpaid balance of the original principal obligation of the mortgage shall not exceed the original principal obligation of the mortgage: *Provided,* That if the mortgagor certifies that the proceeds of such open-end advance will be used to finance the construction of an additional room or rooms or other additional enclosed space as a part of the dwelling, the aggregate amount of the unpaid balance of the original principal obligation, plus the amount of the open-end advance, may exceed the amount of the original principal obligation of the mortgage, but in no event shall such aggregate amount exceed the maximum amounts prescribed by the limitations of §§ 203.18, 203.18a, 203.18b, or 203.43.

* * * * *

Section 203.45 is amended by revising paragraph (c)(1) to read as follows:

§ 203.45 Eligibility of graduated payment mortgages.

* * * * *

(c) * * *

(1) The limits prescribed by §§ 203.18(a), 203.18(b), 203.18a, and 203.18b or,

* * * * *

Section 203.46 is amended to revise paragraph (d)(1) to read as follows:

§ 203.46 Eligibility of modified graduated payment mortgages.

* * * * *

(d) * * *

(1) The limits prescribed in §§ 203.18(a), 203.18(b), 203.18a, and 203.18b: *Provided,* That the appraised value shall not exceed 110 percent of the median prototype housing costing limits as established by the Commissioner for the market area in which the property is located, or

* * * * *

Section 203.50 is amended by revising paragraphs (f)(1) and (2) to read as follows:

§ 203.50 Eligibility of rehabilitation loans.

* * * * *

(f) * * *

(1) The limits prescribed in §§ 203.18(a)(1) and (2), 203.18(c), 203.18a, and 203.18b, based upon the sum of the estimated cost of rehabilitation and the Commissioner's estimate of the value of the property before rehabilitation, or

(2) The limits prescribed in §§ 203.18(a)(1) and (2), 203.18(c), 203.18a, and 203.18b, based upon 110 percent of the Commissioner's estimate of value of the property after rehabilitation.

* * * * *

Part 203 is amended by adding the following Appendix A at the end of the Part:

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APPENDIX A

SCHEDULE OF SECTION 203(b) AREA-WIDE ONE- TO FOUR-FAMILY MORTGAGE LIMITS

For any market area (county or part of a county) not listed in Appendix A below, the following maximum mortgage limits shall apply: $67,500 for a one-family unit; $76,000 for a two-family unit; $92,000 for a three-family unit; and $107,000 for a four-family unit.

Region I

HUD Field Office: Hartford Area Office

Market Area Designation	Local Jurisdictions	Section 203(b) Mortgage Limits 1-Family	2-Family	3-Family	4-Family
BRIDGEPORT, CT SMSA	Fairfield County (part) — Bridgeport City — Shelton City — Easton Town — Fairfield Town — Monroe Town — Stratford Town — Trumbull Town New Haven County (part) — Derby City — Milford City	$ 69,500	$ 78,500	$ 95,500	$ 110,000
DANBURY, CT SMSA	Fairfield County (part) — Danbury City — Bethel Town — Brookfield Town — New Fairfield Town — Newtown Town — Redding Town Litchfield County (part) — New Milford Town	$ 75,000	$ 84,000	$ 102,500	$ 118,000
NORWALK, CT SMSA	Fairfield County (part) — Norwalk City — Weston Town — Westport Town — Wilton Town	$ 75,000	$ 84,000	$ 102,500	$ 118,000
STAMFORD, CT SMSA	Fairfield County (part) — Stamford City — Darien Town — Greenwich Town — New Canaan Town	$ 75,000	$ 84,000	$ 102,500	$ 118,000

Market Area Designation	Local Jurisdictions	Section 203(b) Mortgage Limits 1-Family	2-Family	3-Family	4-Family
Region II					
HUD Field Office: New York Area Office					
NEW YORK AND NASSAU-SUFFOLK, NY SMSAS (Combined)	Bronx County Kings County Nassau County New York County Putnam County Queens County Richmond County Rockland County Suffolk County Westchester County	$ 72,000	$ 81,000	$ 98,500	$ 113,500
HUD Field Office: Newark Area Office					
STATE OF NEW JERSEY --NORTHERN METRO AREAS	Bergen County Essex County Hudson County Middlesex County Monmouth County Morris County Passaic County Somerset County Union County	$ 77,000	$ 86,500	$ 105,000	$ 122,000
HUD Field Office: Camden Service Office					
ATLANTIC CITY, NJ SMSA	Atlantic County	$ 69,000	$ 77,500	$ 94,000	$ 108,500
TRENTON, NJ SMSA	Mercer County	$ 68,500	$ 77,000	$ 93,500	$ 108,000
Region III					
HUD Field Office: Washington, DC Area Office					
WASHINGTON, DC-MD-VA SMSA	District of Columbia Montgomery County, MD Prince Georges County, MD Alexandria City, VA Fairfax City, VA Falls Church City, VA Manassas City, VA Manassas Park City, VA Arlington County, VA Fairfax County, VA Loudoun County, VA Prince William County, VA	$ 89,500	$ 100,500	$ 122,000	$ 141,500

Market Area Designation	Local Jurisdictions	Section 203(b) Mortgage Limits 1-Family	2-Family	3-Family	4-Family
HUD Field Office: Baltimore Area Office					
WASHINGTON, DC-MD-VA SMSA	Charles County, MD	$ 89,500	$ 100,500	$ 122,000	$ 141,500
HUD Field Office: Richmond Area Office					
NEWPORT NEWS-HAMPTON AND NORFOLK-VA BEACH-PORTSMOUTH, VA SMSAS (Combined)	Chesapeake City Hampton City Newport News City Norfolk City Poquoson City Portsmouth City Suffolk City Virginia Beach City Williamsburg City Gloucester County James City County York County	$ 76,500	$ 86,000	$ 104,500	$ 120,500
Region IV					
HUD Field Office: Greensboro Area Office					
NEWPORT NEWS-HAMPTON AND NORFOLK-VA BEACH-PORTSMOUTH, VA SMSA	Currituck County	$ 76,500	$ 86,000	$ 104,500	$ 120,500
HUD Field Office: Columbia Area Office					
CHARLESTON-NORTH CHARLESTON, SC SMSA	Berkeley County Charleston County Dorchester County	$ 75,000	$ 84,000	$ 102,500	$ 118,000
HUD Field Office: Atlanta Area Office					
ATLANTA, GA SMSA	Butts County Cherokee County Clayton County Cobb County De Kalb County Douglas County Fayette County Forsyth County Fulton County Gwinnett County Henry County Newton County Paulding County Rockdale County Walton County	$ 70,500	$ 79,000	$ 96,500	$ 111,000

Market Area Designation	Local Jurisdictions	Section 203(b) Mortgage Limits 1-Family	2-Family	3-Family	4-Family
HUD Field Office: Birmingham Area Office					
MOBILE, AL SMSA	Baldwin County Mobile County	$ 75,000	$ 84,000	$ 102,500	$ 118,000
MONTGOMERY, AL SMSA	Autauga County Elmore County Montgomery County	$ 75,000	$ 84,000	$ 102,500	$ 118,000
HUD Field Office: Memphis Service Office					
MEMPHIS, TN-AR-MS SMSA	Shelby County Tipton County	$ 75,000	$ 84,000	$ 102,500	$ 118,000
HUD Field Office: Jackson Area Office					
MEMPHIS, TN-AR-MS SMSA	De Soto County	$ 75,000	$ 84,000	$ 102,500	$ 118,000
Region V					
HUD Field Office: Minneapolis-St. Paul Area Office					
MINNEAPOLIS-ST PAUL, MN SMSA	Anoka County Carver County Chisago County Dakota County Hennepin County Ramsey County Scott County Washington County Wright County	$ 71,000	$ 80,000	$ 97,500	$ 112,500
HUD Field Office: Milwaukee Area Office					
MINNEAPOLIS-ST PAUL, MN SMSA	St. Croix County	$ 71,000	$ 80,000	$ 97,500	$ 112,500
MILWAUKEE, WI SMSA	Milwaukee County Ozaukee County Washington County Waukesha County	$ 71,500	$ 80,500	$ 98,000	$ 113,000

Region VI

HUD Field Office: Dallas Area Office

Market Area Designation	Local Jurisdictions	Section-203(b) Mortgage Limits 1-Family	2-Family	3-Family	4-Family
DALLAS-FT. WORTH AND SHERMAN-DENISON, TX SMSAS (Combined)	Collin County Dallas County Denton County Ellis County Grayson County Kaufman County Rockwall County	$ 70,500	$ 79,000	$ 96,000	$ 111,000

HUD Field Office: Fort Worth Service Office

DALLAS-FT. WORTH AND SHERMAN-DENISON, TX SMSAS (Combined)	Hood County Johnson County Parker County Tarrant County Wise County	$ 70,500	$ 79,000	$ 96,000	$ 111,000

HUD Field Office: Houston Service Office

HOUSTON, TX SMSA	Brazoria County Ft. Bend County Harris County Liberty County Montgomery County Waller County	$ 69,500	$ 78,000	$ 95,000	$ 109,500

HUD Field Office: Lubbock Service Office

AMARILLO, TX SMSA	Potter County Randall County	$ 68,500	$ 77,000	$ 93,500	$ 108,000
LUBBOCK, TX SMSA	Lubbock County	$ 70,000	$ 78,500	$ 95,500	$ 110,500
MIDLAND, TX SMSA	Ector County Midland County	$ 70,000	$ 78,500	$ 95,500	$ 110,500

Market Area Designation	Local Jurisdictions	Section 203(b) Mortgage Limits 1-Family	2-Family	3-Family	4-Family
HUD Field Office: San Antonio Area Office					
AUSTIN AND SAN ANTONIO, TX SMSAS (Combined)	Bexar County Comal County Guadalupe County Hays County Travis County Williamson County	$ 69,500	$ 78,500	$ 95,500	$ 110,000
CORPUS CHRISTI, TX SMSA	Nueces County San Patricio County	$ 70,000	$ 78,500	$ 95,500	$ 110,500
HUD Field Office: Little Rock Area Office					
MEMPHIS, TN-AR-MS SMSA	Crittenden County	$ 75,000	$ 84,000	$ 102,500	$ 118,000
HUD Field Office: New Orleans Area Office					
BATON ROUGE AND NEW ORLEANS, LA SMSAS (Combined)	Ascension Parish East Baton Rouge Parish Jefferson Parish Livingston Parish Orleans Parish St. Bernard Parish St. Tammany Parish West Baton Rouge Parish	$ 71,500	$ 80,500	$ 98,000	$ 113,000
HUD Field Office: Albuquerque Service Office					
ALBUQUERQUE, NM SMSA	Bernalillo County Sandoval County	$ 70,500	$ 79,500	$ 97,000	$ 111,500
HUD Field Office: Tulsa Service Office					
TULSA, OK SMSA	Creek County Mayes County Osage County Rogers County Tulsa County Wagoner County	$ 69,000	$ 78,000	$ 94,500	$ 109,500

Region VIII

HUD Field Office: Denver Area Office

Market Area Designation	Local Jurisdictions	Section 203(b) Mortgage Limits 1-Family	2-Family	3-Family	4-Family
DENVER-BOULDER, CO SMSA	Adams County Arapahoe County Boulder County Denver County Douglas County Gilpin County Jefferson County	$ 70,500	$ 79,500	$ 96,500	$ 111,500

HUD Field Office: Helena Service Office

BILLINGS, MN SMSA	Yellowstone County	$ 75,000	$ 84,000	$ 102,500	$ 118,000
GREAT FALLS, MN SMSA	Cascade County	$ 75,000	$ 84,000	$ 102,500	$ 118,000

Region IX

HUD Field Office: Los Angeles Area Office

LOS ANGELES AREA OFFICE METRO AND NON-METRO AREAS	Los Angeles County San Luis Obispo County Santa Barbara County Ventura County	$ 90,000	$ 101,300	$ 122,600	$ 142,600

HUD Field Office: San Francisco Area Office

SAN FRANCISCO AREA OFFICE METRO AND NON-METRO AREAS	Alameda County Contra Costa County Del Norte County Humboldt County Lake County Marin County Mendocin County Monterey County Napa County San Benito County San Francisco County San Mateo County Santa Clara County Santa Cruz County Solano County Sonoma County	$ 90,000	$ 101,300	$ 122,600	$ 142,600

HUD Field Office: Fresno Service Office

Market Area Designation	Local Jurisdictions	Section 203(b) Mortgage Limits 1-Family	2-Family	3-Family	4-Family
FRESNO SERVICE OFFICE METRO AND NON-METRO AREAS	Fresno County Kern County Kings County Madera County Mariposa County Merced County Stanislaus County Tulare County	$ 69,500	$ 78,000	$ 95,000	$ 110,000

HUD Field Office: Sacramento Service Office

SACRAMENTO SERVICE OFFICE METRO AND NON-METRO AREAS	Alpine County Amador County Butte County Calaveras County Colusa County El Dorado County Glenn County Lassen County Modoc County Nevada County Placer County Plumas County Sacramento County San Joaquin County Shasta County Sierra County Siskiyou County Sutter County Tehama County Trinity County Tuolumne County Yolo County Yuba County	$ 79,000	$ 89,000	$ 108,500	$ 125,000

HUD Field Office: San Diego Service Office

SAN DIEGO SERVICE OFFICE METRO AND NON-METRO AREAS	Imperial County San Diego County	$ 87,500	$ 98,000	$ 119,500	$ 138,000

Market Area Designation	Local Jurisdictions	Section 203(b) Mortgage Limits 1-Family	2-Family	3-Family	4-Family
HUD Field Office: Santa Ana Service Office					
SANTA ANA SERVICE OFFICE METRO AREAS	Orange County Riverside County San Bernardino County	$ 90,000	$ 101,300	$ 122,600	$ 142,600
SANTA ANA SERVICE OFFICE NON-METRO AREAS	Inyo County Mono County	$ 69,500	$ 78,000	$ 95,000	$ 110,000
HUD Field Office: Las Vegas Service Office					
LAS VEGAS, NV SMSA	Clark County	$ 90,000	$ 101,300	$ 122,600	$ 142,600
STATE OF NEVADA--NON-METRO AREAS	Lincoln County Nye County (part)	$ 75,000	$ 84,000	$ 102,500	$ 118,000
HUD Field Office: Reno Service Office					
RENO, NV SMSA	Washoe County	$ 86,500	$ 97,500	$ 118,500	$ 136,500
STATE OF NEVADA--NON-METRO AREAS	Carson City County Churchill County Douglas County Elko County Esmeralda County Eureka County Humboldt County Lander County Lyon County Mineral County Nye County (part) Pershing County Storey County White Pine County	$ 75,000	$ 84,000	$ 102,500	$ 118,000
HUD Field Office: Phoenix Service Office					
PHOENIX, AZ SMSA	Maricopa County	$ 81,000	$ 91,500	$ 111,500	$ 128,500
HUD Field Office: Tucson Service Office					
TUCSON, AZ SMSA	Pima County	$ 68,500	$ 77,000	$ 94,000	$ 108,000

Region X

HUD Field Office: Seattle Area Office

Market Area Designation	Local Jurisdictions	Section 203(b) Mortgage Limits 1-Family	2-Family	3-Family	4-Family
SEATTLE-EVERETT AND TACOMA, WA SMSAS (Combined)	King County Pierce County Snohomish County	$ 71,000	$ 80,000	$ 97,500	$ 112,500
RICHLAND-KENNEWICK AND YAKIMA, WA SMSAS (Combined)	Yakima County	$ 72,000	$ 81,500	$ 99,000	$ 114,000

HUD Field Office: Spokane Service Office

RICHLAND-KENNEWICK AND YAKIMA, WA SMSAS (Combined)	Benton County Franklin County	$ 72,000	$ 81,500	$ 99,000	$ 114,000

HUD Field Office: Boise Service Office

BOISE CITY, ID SMSA	Ada County	$ 70,000	$ 78,500	$ 95,500	$ 110,500

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PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

Subpart A—Eligibility Requirements—Homes

Section 220.1 is amended by revising the list of provisions in paragraph (a) to read as follows:

§ 220.1 Cross-reference.

(a) * * *

Sec.
203.15 Certification of appraisal amount.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.28 Economic soundness of project.
203.40 Location of property.
203.42 Rental properties.
203.50 Eligibility of rehabilitation loans.
* * * * *

Section 220.25 is amended to read as follows:

§ 220.25 Maximum mortgage amounts—dollar limitation.

The mortgage shall involve a principal obligation not in excess of the dollar limitation set forth in § 203.18(a)(1) or § 203.18b plus not to exceed $9,165 for each additional unit in excess of four.

Section 220.100 is amended by revising the list of provisions in paragraph (a) to read as follows:

§ 220.100 Incorporation by reference.

(a) * * *

Sec.
203.14 Builder's warranty.
203.15 Certification of appraisal amount.
203.17 Mortgage provisions.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.23 Mortgagor's payments to include other charges.
203.24 Application of payments.
203.26 Mortgagor's payments when mortgage is executed.
203.28 Economic soundness of project.
203.32 Mortgage lien.
203.37 Nature of title to realty.
203.38 Location of dwelling.
203.40 Location of property.
203.42 Rental properties.
203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.
203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.
203.45 Eligibility of graduated payment mortgages.
203.46 Eligibility of modified graduated payment mortgages.
203.50 Eligibility of rehabilitation loans.
* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Low Cost Homes

Section 221.1 is amended by revising the list of provisions in paragraph (a) to read as follows:

§ 221.1 Cross-reference.

(a) * * *

Sec.
203.17 Mortgage provisions.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.28 Economic soundness of project.
203.40 Location of property.
203.42 Rental properties.
203.45 Eligibility of graduated payment mortgages.
203.46 Eligibility of modified graduated payment mortgages.
203.50 Eligibility of rehabilitation loans.
* * * * *

PART 222—SERVICEMEN'S MORTGAGE INSURANCE

Subpart A—Eligibility Requirements

Section 222.1 is amended by revising the list of provisions in paragraph (a) to read as follows:

§ 221.1 Cross-reference

(a) * * *

Sec.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.24 Application of payments.
203.31 Owner-occupancy in military service cases.
203.38 Location of dwelling.
203.50 Eligibility of rehabilitation loans.
* * * * *

Section 222.3 is amended to read as follows:

§ 222.3 Maximum mortgage amounts—dollar limitation.

The mortgage shall involve a principal obligation not in excess of the dollar limitation for a one-family residence set forth in § 203.18(a)(1) or § 203.18b or for a one-family unit in a condominium project set forth in § 234.27, except that a mortgage meeting the requirements of §§ 203.18(d), 221.10 or 221.11 shall not exceed the dollar limitation provided in the applicable section.

PART 226—ARMED SERVICES HOUSING CIVILIAN EMPLOYEES (SECTION 809)

Subpart A—Eligibility Requirements

Section 226.1 is amended by revising the list of provisions in paragraph (a) to read as follows:

§ 226.1 Cross-reference.

(a) * * *

Sec.
203.18 Maximum mortgage amount.
203.18a Solar energy systems
203.18b Increased mortgage amount.
203.28 Economic soundness of project.
203.42 Rental properties.
203.43a Eligibility of housing in declining urban areas.
203.50 Eligibility of rehabilitation loans.
* * * * *

Section 226.4 is amended to read as follows:

§ 226.4 Maximum mortgage amount—dollar limitation.

The mortgage shall involve a principal obligation not in excess of the dollar limitation set forth in § 203.18(a)(1) or § 203.18b.

PART 227—ARMED SERVICES HOUSING IMPACTED AREAS (SEC. 810)

Subpart C—Eligibility Requirements—Individual Mortgages

Section 227.501 is amended by revising the list of provisions in paragraph (b) to read as follows:

§ 227.501 Cross-reference.

* * * * *

(b)(1) * * *

Sec
203.17 Mortgage provisions.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.28 Economic soundness of project.
203.29 Eligible mortgages in Alaska, Guam or Hawaii.
203.40 Location of property.
203.42 Rental properties.
203.43 Eligibility of miscellaneous type mortgages.
203.43a Eligibility of housing in declining urban areas.
203.50 Eligibility of rehabilitation loans.
(2) * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

Subpart A—Eligibility Requirements—Individually Owned Units

Section 234.27 is amended by revising paragraph (b) to read as follows:

§ 234.27 Maximum mortgage amounts.

(a) * * *

(b) *Increased mortgage amount.* The dollar limitations specified in subparagraph (a)(1) of this section are increased to the amounts set forth in Appendix A to this part, for the geographical areas indicated in the Appendix. In any geographical area where the Commissioner finds that middle- and moderate-income persons have limited housing opportunities due to the high prevailing housing sales prices, the Commissioner may increase or decrease the dollar limitations specified in § 234.27(a) or in Appendix A to the extent he/she deems necessary by publishing the dollar limitation in the Federal Register. The increased dollar limitation shall not exceed the lesser of 111 percent of the amount specified in subparagraph (a)(1) or 95 percent of the median one-family house price in the area as determined by the Commissioner.

* * * * *

Section 234.75 is amended by revising paragraph (c)(1) to read as follows:

§ 234.75 Eligibility of graduated payment mortgages.

* * * * *

(c) * * *

(1) The limits prescribed in §§ 234.27(a), 234.27(b), and 234.27(c), or

* * * * *

Section 234.76 is amended by revising paragraph (d) to read as follows:

§ 234.76 Eligibility of modified graduated payment mortgages.

* * * * *

(d) * * *

(1) The limits prescribed in §§ 234.27(a), 234.27(b), and 234.27(c), provided that the appraised value shall not exceed 110 percent of the median prototype housing cost limits as established by the Commissioner for the market area in which the property is located.

* * * * *

Part 234 is amended by adding the following Appendix A at the end of the Part:

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APPENDIX A

SCHEDULE OF SECTION 234(c) AREA-WIDE ONE-FAMILY MORTGAGE LIMITS

For any market area (county or part of a county) not listed in Appendix A below, the maximum mortgage limit for a one-family condominium unit insured under Section 234(c) shall be $67,500.

Region I

HUD Field Office: Hartford Area Office

Market Area Designation	Local Jurisdictions	Section 234(c) Mortgage Limit
BRIDGEPORT, CT SMSA	Fairfield County (part) — Bridgeport City — Shelton City — Easton Town — Fairfield Town — Monroe Town — Stratford Town — Trumbull Town New Haven County (part) — Derby City — Milford City	$ 69,500
DANBURY, CT SMSA	Fairfield County (part) — Danbury City — Bethel Town — Brookfield Town — New Fairfield Town — Newtown Town — Redding Town Litchfield County (part) — New Milford Town	$ 74,900
NORWALK, CT SMSA	Fairfield County (part) — Norwalk City — Weston Town — Westport Town — Wilton Town	$ 74,900
STAMFORD, CT SMSA	Fairfield County (part) — Stamford City — Darien Town — Greenwich Town — New Canaan Town	$ 74,900

Market Area Designation	Local Jurisdictions	Section 234(c) Mortgage Limit
Region II		
HUD Field Office: New York Area Office		
NEW YORK AND NASSAU-SUFFOLK, NY SMSAS (Combined)	Bronx County Kings County Nassau County New York County Putnam County Queens County Richmond County Rockland County Suffolk County Westchester County	$ 72,000
HUD Field Office: Newark Area Office		
STATE OF NEW JERSEY—NORTHERN METRO AREAS	Bergen County Essex County Hudson County Middlesex County Monmouth County Morris County Passaic County Somerset County Union County	$ 74,900
HUD Field Office: Camden Service Office		
ATLANTIC CITY, NJ SMSA	Atlantic County	$ 69,000
TRENTON, NJ SMSA	Mercer County	$ 68,500
Region III		
HUD Field Office: Washington, DC Area Office		
WASHINGTON, DC-MD-VA SMSA	District of Columbia Montgomery County, MD Prince Georges County, MD Alexandria City, VA Fairfax City, VA Falls Church City, VA Manassas City, VA Manassas Park City, VA Arlington County, VA Fairfax County, VA Loudoun County, VA Prince William County, VA	$ 74,900

Market Area Designation	Local Jurisdictions	Section 234(c) Mortgage Limit
HUD Field Office: Baltimore Area Office		
WASHINGTON, DC-MD-VA SMSA	Charles County, MD	$ 74,900
HUD Field Office: Richmond Area Office		
NEWPORT NEWS-HAMPTON AND NORFOLK-VA BEACH-PORTSMOUTH, VA SMSAS (Combined)	Chesapeake City Hampton City Newport News City Norfolk City Poquoson City Portsmouth City Suffolk City Virginia Beach City Williamsburg City Gloucester County James City County York County	$ 74,900
Region IV		
HUD Field Office: Greensboro Area Office		
NEWPORT NEWS-HAMPTON AND NORFOLK-VA BEACH-PORTSMOUTH, VA SMSA	Currituck County	$ 74,900
HUD Field Office: Columbia Area Office		
CHARLESTON-NORTH CHARLESTON, SC SMSA	Berkeley County Charleston County Dorchester County	$ 74,900
HUD Field Office: Atlanta Area Office		
ATLANTA, GA SMSA	Butts County Cherokee County Clayton County Cobb County De Kalb County Douglas County Fayette County Forsyth County Fulton County Gwinnett County Henry County Newton County Paulding County Rockdale County Walton County	$ 70,500

Market Area Designation	Local Jurisdictions	Section 234(c) Mortgage Limit
HUD Field Office: Birmingham Area Office		
MOBILE, AL SMSA	Baldwin County Mobile County	$ 74,900
MONTGOMERY, AL SMSA	Autauga County Elmore County Montgomery County	$ 74,900
HUD Field Office: Memphis Service Office		
MEMPHIS, TN-AR-MS SMSA	Shelby County Tipton County	$ 74,900
HUD Field Office: Jackson Area Office		
MEMPHIS, TN-AR-MS SMSA	De Soto County	$ 74,900
Region V		
HUD Field Office: Minneapolis-St. Paul Area Office		
MINNEAPOLIS-ST PAUL, MN SMSA	Anoka County Carver County Chisago County Dakota County Hennepin County Ramsey County Scott County Washington County Wright County	$ 71,000
HUD Field Office: Milwaukee Area Office		
MINNEAPOLIS-ST PAUL, MN SMSA	St. Croix County	$ 71,000
MILWAUKEE, WI SMSA	Milwaukee County Ozaukee County Washington County Waukesha County	$ 71,500

Region VI

HUD Field Office: Dallas Area Office

Market Area Designation	Local Jurisdictions	Section 234(c) Mortgage Limit
DALLAS-FT. WORTH AND SHERMAN-DENISON, TX SMSAS (Combined)	Collin County Dallas County Denton County Ellis County Grayson County Kaufman County Rockwall County	$ 70,500

HUD Field Office: Fort Worth Service Office

DALLAS-FT. WORTH AND SHERMAN-DENISON, TX SMSAS (Combined)	Hood County Johnson County Parker County Tarrant County Wise County	$ 70,500

HUD Field Office: Houston Service Office

HOUSTON, TX SMSA	Brazoria County Ft. Bend County Harris County Liberty County Montgomery County Waller County	$ 69,500

HUD Field Office: Lubbock Service Office

AMARILLO, TX SMSA	Potter County Randall County	$ 68,500
LUBBOCK, TX SMSA	Lubbock County	$ 70,000
MIDLAND, TX SMSA	Ector County Midland County	$ 70,000

Market Area Designation	Local Jurisdictions	Section 234(c) Mortgage Limits
HUD Field Office: San Antonio Area Office		
AUSTIN AND SAN ANTONIO, TX SMSAS (Combined)	Bexar County Comal County Guadalupe County Hays County Travis County Williamson County	$ 69,500
CORPUS CHRISTI, TX SMSA	Nueces County San Patricio County	$ 70,000
HUD Field Office: Little Rock Area Office		
MEMPHIS, TN-AR-MS SMSA	Crittenden County	$ 74,900
HUD Field Office: New Orleans Area Office		
BATON ROUGE AND NEW ORLEANS, LA SMSAS (Combined)	Ascension Parish East Baton Rouge Parish Jefferson Parish Livingston Parish Orleans Parish St. Bernard Parish St. Tammany Parish West Baton Rouge Parish	$ 71,500
HUD Field Office: Albuquerque Service Office		
ALBUQUERQUE, NM SMSA	Bernalillo County Sandoval County	$ 70,500
HUD Field Office: Tulsa Service Office		
TULSA, OK SMSA	Creek County Mayes County Osage County Rogers County Tulsa County Wagoner County	$ 69,000

Region VIII

HUD Field Office: Denver Area Office

Market Area Designation	Local Jurisdictions	Section 234(c) Mortgage Limit
DENVER-BOULDER, CO SMSA	Adams County Arapahoe County Boulder County Denver County Douglas County Gilpin County Jefferson County	$ 70,500

HUD Field Office: Helena Service Office

BILLINGS, MN SMSA	Yellowstone County	$ 74,900
GREAT FALLS, MN SMSA	Cascade County	$ 74,900

Region IX

HUD Field Office: Los Angeles Area Office

LOS ANGELES AREA OFFICE METRO AND NON-METRO AREAS	Los Angeles County San Luis Obispo County Santa Barbara County Ventura County	$ 74,900

HUD Field Office: San Francisco Area Office

SAN FRANCISCO AREA OFFICE METRO AND NON-METRO AREAS	Alameda County Contra Costa County Del Norte County Humboldt County Lake County Marin County Mendocin County Monterey County Napa County San Benito County San Francisco County San Mateo County Santa Clara County Santa Cruz County Solano County Sonoma County	$ 74,900

Market Area Designation	Local Jurisdictions	Section 234(c) Mortgage Limit
HUD Field Office: Fresno Service Office		
FRESNO SERVICE OFFICE METRO AND NON-METRO AREAS	Fresno County Kern County Kings County Madera County Mariposa County Merced County Stanislaus County Tulare County	$ 69,500
HUD Field Office: Sacramento Service Office		
SACRAMENTO SERVICE OFFICE METRO AND NON-METRO AREAS	Alpine County Amador County Butte County Calaveras County Colusa County El Dorado County Glenn County Lassen County Modoc County Nevada County Placer County Plumas County Sacramento County San Joaquin County Shasta County Sierra County Siskiyou County Sutter County Tehama County Trinity County Tuolumne County Yolo County Yuba County	$ 74,900
HUD Field Office: San Diego Service Office		
SAN DIEGO SERVICE OFFICE METRO AND NON-METRO AREAS	Imperial County San Diego County	$ 74,900

Market Area Designation	Local Jurisdictions	Section 234(c) Mortgage Limit
HUD Field Office: Santa Ana Service Office		
SANTA ANA SERVICE OFFICE METRO AREAS	Orange County Riverside County San Bernardino County	$ 74,900
SANTA ANA SERVICE OFFICE NON-METRO AREAS	Inyo County Mono County	$ 69,500
HUD Field Office: Las Vegas Service Office		
LAS VEGAS, NV SMSA	Clark County	$ 74,900
STATE OF NEVADA--NON-METRO AREAS	Lincoln County Nye County (part)	$ 74,900
HUD Field Office: Reno Service Office		
RENO, NV SMSA	Washoe County	$ 74,900
STATE OF NEVADA--NON-METRO AREAS	Carson City County Churchill County Douglas County Elko County Esmeralda County Eureka County Humboldt County Lander County Lyon County Mineral County Nye County (part) Pershing County Storey County White Pine County	$ 74,900
HUD Field Office: Phoenix Service Office		
PHOENIX, AZ SMSA	Maricopa County	$ 74,900
HUD Field Office: Tucson Service Office		
TUCSON, AZ SMSA	Pima County	$ 68,500

Region X

HUD Field Office: Seattle Area Office

Market Area Designation	Local Jurisdictions	Section 234(c) Mortgage Limit
SEATTLE-EVERETT AND TACOMA, WA SMSAS (Combined)	King County Pierce County Snohomish County	$ 71,000
RICHLAND-KENNEWICK AND YAKIMA, WA SMSAS (Combined)	Yakima County	$ 72,000

HUD Field Office: Spokane Service Office

RICHLAND-KENNEWICK AND YAKIMA, WA SMSAS (Combined)	Benton County Franklin County	$ 72,000

HUD Field Office: Boise Service Office

BOISE CITY, ID SMSA	Ada County	$ 70,000

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PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOMEOWNERSHIP AND PROJECT REHABILITATION

Subpart A General; Eligibility Requirements—Homes for Lower Income Families

Section 235.1 is amended by revising the list of provisions in paragraph (a) to read as follows:

§ 235.1 Cross-reference.

(a) * * *

Sec.
203.16 Certificate and contract regarding use of dwelling for transient or hotel purposes.
203.17 Mortgage provisions.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.25 Late charge.
203.28 Economic soundness of project.
203.29 Eligible mortgages in Alaska, Guam or Hawaii.
203.33 Relationship of income to mortgage payments.
203.36 Certificate and contract regarding use of dwelling for transient or hotel purposes.
203.38 Location of dwelling.
203.42 Rental properties.
203.43 Eligibility of miscellaneous type mortgages.
203.44 Eligibility of open-end advances.
203.45 Eligibility of graduated payment mortgages.
203.46 Eligibility of modified graduated payment mortgages.
203.50 Eligibility of rehabilitation loans.
* * * * *

PART 240—MORTGAGE INSURANCE ON LOANS FOR FEE TITLE PURCHASE

Subpart A—Eligibility Requirements

Section 240.1 is amended by revising the list of provisions in paragraph (a) to read as follows:

* * * * *

Sec.
203.14 Builder's warranty.
203.15 Certification of appraisal amount.
203.16a Mortgagor and mortgagee requirement for maintaining insurance coverage.
203.17 Mortgage provisions.
203.18 Maximum mortgage amount.
203.18a Solar energy systems.
203.18b Increased mortgage amount.
203.19 Mortgagor's minimum investment.
203.23 Mortgagor's payments to include other charges.
203.24 Application of payments.
203.26 Mortgagor's payments when mortgage is executed.
203.28 Economic soundness of project.
203.32 Mortgage lien.
203.37 Nature of title to realty.
203.38 Location of dwelling.
203.39 Standard for buildings
203.43b Eligibility of mortgages covering housing intended for seasonal occupancy.
203.43c Eligibility of mortgages involving a dwelling unit in a cooperative housing development.
203.45 Eligibility of graduated payment mortgages.
203.46 Eligibility of modified graduated payment mortgages.
203.50 Eligibility of rehabilitation loans.
* * * * *

Section 240.5 is amended by revising paragraph (b) to read as follows:

§ 240.5 Maximum loan amounts.

* * * * *

(b) An amount which when added to any outstanding indebtedness related to the property, as determined by the Commissioner, creates a total outstanding indebtedness which does not exceed the limits prescribed in §§ 203.18(a)(1), 203.18(b), 203.18(c), 203.18a, 203.18b of this Chapter as applicable.

Authority: (Sec. 211 of the National Housing Act (12 U.S.C. 1709, 1715)).

Issued at Washington, D.C., October 23, 1980.

Clyde McHenry,

Deputy Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 80-[illegible] Filed 11-14-80; 8:45 am]

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Federal Register

Tuesday
November 18, 1980

Part VI

Environmental Protection Agency

Standards of Performance for New Stationary Sources: Asphalt Processing and Asphalt Roofing Manufacture and Priority List; Proposed Rules and Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-1505-7]

Standards of Performance for New Stationary Sources; Asphalt Processing and Asphalt Roofing Manufacture

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit atmospheric emissions of particulate matter from new, modified, and reconstructed asphalt blowing stills, asphalt saturators, asphalt storage tanks, and mineral handling and storage operations in the asphalt processing and roofing manufacturing industry. In addition, the proposed standards will limit the opacity of emissions from asphalt blowing stills, asphalt saturators, asphalt storage tanks, and mineral handlings and storage operations and fugitive emissions from asphalt saturator hooding. Two EPA reference methods are also being proposed along with the standards.

The standards implement Section 111 of the clean Air Act and are based on the Administrator's determination that asphalt processing and asphalt roofing manufacturing facilities contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The intended effect is to require new, modified, and reconstructed affected facilities in asphalt roofing manufacturing plants, oil refineries, and asphalt processing plants to use the best demonstrated system of continuous emission reduction, considering costs, non-air quality health and environmental impacts, and energy impacts.

If requested, a public hearing will be held to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before January 19, 1981.

Public Hearing. A public hearing will be held, if requested. Persons wishing to request a public hearing must contact EPA by December 2, 1980. If a hearing is requested, an announcement of the date and place will appear in a separate Federal Register notice.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket No. OAQPS A-79-39. U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Public Hearing. Persons wishing to request a public hearing should notify Ms. Deanna B. Tilley, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 451-5477.

Background Information Document. The background information document (BID) for the proposed standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "Asphalt Roofing Manufacturing Industry, Background Information for Proposed Standards," EPA-450/3-80-021a.

Docket. A docket, number OAQPS A-79-39, containing information used by EPA in development of the proposed standards, is available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday, at EPA's Central Docket Section (A-130), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Wyatt, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5477.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The proposed standards would limit particulate emissions from the following new, modified, or reconstructed affected facilities in asphalt roofing manufacturing plants, oil refineries, and asphalt processing plants: Blowing stills; saturators, wet loopers, and coaters; asphalt storage tanks; and mineral handling and storage areas. The saturator, wet looper, and coater are considered to be one facility and are designated as the saturator.

Particulate emission limitations are proposed for blowing stills and saturators. Blowing still particulate emissions would be limited to 0.60 kg/Mg (1.28 lb/ton) of asphalt charged during conventional blowing and 0.67 kg/Mg (1.34 lb/ton) of asphalt charged during catalytic blowing. When No. 6 fuel oil is used to fire the afterburner, the particulate emissions from blowing stills would be limited to 0.64 kg/Mg (1.28 lb/ton) of asphalt charged for conventional blowing and 0.71 kg/Mg (1.42 lb/ton) of asphalt charged for catalytic blowing. Saturator particulate emissions would be limited to 0.04 kg/Mg (0.08 lb/ton) of shingle and mineral-surfaced roll roofing produced or to 0.4 kg/Mg (0.8 lb/ton) of saturated felt and smooth-surfaced roll roofing produced, depending on the product.

An opacity standard is proposed for each affected facility as follows: 0 percent for blowing stills, 20 percent for saturators, 0 percent for asphalt storage tanks, and 1 percent for mineral handling and storage areas. A fugitive emission standard of no visible emissions 80 percent of the time is proposed for saturator capture systems.

Continuous monitoring of the operating temperature of the control devices used to meet the proposed standards would be required to ensure proper operation and maintenance.

The performance test methods for determining compliance with the proposed standards would be Reference Method 26 for particulate emissions, Reference Method 9 for opacity, and Reference Method 22 for fugitive emissions. Methods 22 and 26 are being proposed along with the proposed standards.

Summary of Environmental, Energy, and Economic Impacts

It is projected that the equivalent of three new medium-size asphalt processing and roofing plants will be constructed within 5 years from the proposal date of the standards. The proposed standards would reduce particulate emissions from asphalt processing and asphalt roofing plants by about 490 megagrams per year (540 tons per year) in the fifth year after the standards are proposed. This represents a reduction in particulate emissions of 65 percent from State Implementation Plan (SIP) levels.

The proposed standards would increase wastewater from a typical asphalt roofing plant by approximately 1.0 percent. There would be no change in the quality of the wastewater as a result of the proposed standards. The impact of the proposed standards on solid waste disposal would be negligible. There would be no impact on noise.

The proposed standards would increase the total energy consumption of a typical asphalt roofing plant by about 3.2 percent. This would increase the nationwide energy usage by the equivalent of approximately 600 cubic meters (3,800 barrels) of oil per year in the fifth year after the standards go into effect.

Capital costs for industry compliance with the proposed standards over the first 5 years would be $0.30 million. Fifth-year annualized costs would be $0.09 million. As a result of the proposed

standards, the product wholesale price could increase about 0.15 percent, or $0.02/square (80 shingles), which could increase the price for a roof on a typical three-bedroom house by about $3. If the price of shingles cannot be increased and the industry must absorb all of the costs of compliance with the proposed standards, the resulting drop in net profit after taxes would be about 0.4 percent. The costs of emission controls required by the proposed standards is not expected to have any impact on expansion or construction in the asphalt roofing manufacturing industry.

Rationale

Selection of Source for Control

The asphalt processing and asphalt roofing industry is a significant contributor to nationwide emissions of particulate matter. EPA's priority list, 44 FR 49222 of August 21, 1979, identifies source categories chosen for development of new source performance standards (NSPS). During development of the list, consideration was given to the quantity of emissions from each source category, the extent to which each pollutant endangers health and welfare, and the mobility and competitive nature of each source category. The asphalt roofing manufacturing industry is number 45 out of the 59 source categories chosen for NSPS.

The asphalt roofing industry encompasses not only asphalt roofing plants but certain production units at oil refineries and asphalt processing plants which were not included on the Priority List promulgated on August 21, 1979. At asphalt roofing plants, paper and fiberglass felts are saturated with asphalt and sold as saturated felt or saturated and coated with asphalt and surfaced with selected mineral aggregates to produce roll roofing or shingles. The asphalt used for saturants and coatings is prepared by blowing air through hot asphalt flux. Asphalt is blown at 17 oil refineries, at 2 asphalt processing plants, and at about 70 percent of the 118 asphalt roofing plants. An amendment which would add asphalt processing units at oil refineries and asphalt processing plants to the EPA priority list for development of standards of performance is being proposed today in a separate Federal Register notice.

The asphalt roofing industry supplies over 80 percent of the domestic demand for roofing materials. Although a 34 percent increase in asphalt roofing prices since 1974 has caused some acceleration in the search for substitutes, asphalt roofing continues to dominate the market.

The construction of new houses and the renovation of existing structures are the primary determinants of the demand for asphalt roofing products. Declines in construction of new homes have generally been offset by increasing strength in the replacement roofing market; thus, there has been a stable demand for asphalt roofing products. For the past 10 years, the industry has grown 2.0 percent annually; projections for the next 5 years show an expected annual growth of 1.5 to 2.0 percent. Asphalt processing and asphalt roofing plants are located in urban areas where future growth is also expected to take place.

For these reasons, the asphalt processing and asphalt roofing industry has been selected for the developent of new source performance standards.

Selection of Pollutants

The asphalt processing and roofing industry is a source of hydrocarbon particulate, polycyclic organic matter (POM), aldehyde, and sulfur dioxide (SO_2) emissions.

The emissions from the asphalt processing and roofing industry are aerosols containing particulate hydrocarbons. The particulate hydrocarbons comprise 75 percent of all pollutants emitted from an average asphalt roofing plant controlled to typical SIP levels. It is expected that by 1985, annual nationwide particulate emissions from this industry will increase by 770 Mg (850 tons) if emissions are controlled to the level of a typical SIP regulation. These emissions can be significantly reduced by available control technology that has been demonstrated.

Test data indicate that aldehyde and SO_2 emissions from asphalt processing and asphalt roofing manufacture are relatively low compared to particulate emissions. By 1985 the increase in emissions would be only 4.5 Mg/yr (5.0 tons/yr) for aldehyde and 13.5 Mg/yr (15.0 tons/yr) for SO_2. Therefore, SO_2 and aldehyde were not selected for regulation at this time.

By 1985 the annual nationwide increase in POM emissions from new, modified, or reconstructed asphalt processing and asphalt roofing manufacturing plants would be 4.6 Mg (5.1 tons). Control devices generally used to control particulate emissions from asphalt processing roofing manufacture are capable of reducing POM emissions by about 90 percent from uncontrolled levels. Since particulate control devices also control POM, a separate standard for this pollutant is not being proposed at this time.

For the reasons stated in the preceding paragraphs, particulate is the only pollutant selected for regulation by standards of performance at this time. This decision does not preclude the future regulation of aldehyde or POM emissions from asphalt roofing and asphalt processing plants if the Administrator finds that either of these two pollutants endangers health or welfare.

Selection of Facilities To Be Considered for Regulation

The major sources of particulate emissions are asphalt blowing stills; saturators; asphalt storage tanks; and mineral handling and storage facilities, which consist of the unloading area, conveyor transfer points, and storage bins. All of these sources are found in asphalt roofing plants. The asphalt blowing stills and asphalt storage tanks may also be located at oil refineries and asphalt processing plants. The blowing stills and asphalt storage tanks at oil refineries and asphalt processing plants were also considered for regulation by standards of performance because the emissions, processes, and applicable controls are the same as those in asphalt roofing plants.

Typical baseline (SIP) emissions from each facility in a medium size plant are:

Blowing still: 43 kg/h (95 lb/h);
Saturator: 18 kg/h (40 lb/h);
Asphalt storage tanks: 1.8 kg/h (4.0 lb/h); and
Mineral handling and storage area: 1.0 kg/h (2.2 lb/h).

Coater-mixers and mineral surfacing, two relatively insignificant sources of particulate emissions, are located at asphalt roofing plants. Coater-mixers are usually enclosed, and no emissions escape to the atmosphere. Emissions from mineral surfacing are contained within the building. Therefore, these two emission sources were excluded from further consideraton for regulation by standards of performance.

Particulate emission control technolgy exists in the asphalt processing and asphalt roofing industry for all significant sources of particulate emissions. The minerals, the transfer and storage equipment, and the control technology used in the asphalt roofing industry for mineral handling and storage operations are the same as those used in the nonmetalic minerals industries. Therefore, it is appropriate to transfer the control technolgy from these industries to the asphalt roofing manufacturing industry. Blowing stills, saturators, asphalt storage tanks, and mineral handling and storage areas

were selected as facilities to consider for regulation because they are significant sources of particulate emissions for which control technology is available.

Selection of Basis of Proposed Standards

Tests at four asphalt roofing plants have demonstrated that particulate emissions from saturators and asphalt storage tanks may be effectively controlled to essentially the same emission level by any one of three pollution control devices: Afterburner (A/B), high velocity air filter (HVAF), or electrostatic precipitator (ESP). These three devices are commonly used to meet State Implementation Plans; however, the SIP Limits do not necessarily require that the devices achieve the best level of control. To achieve the best level of control, each of the control devices must be operated at the proper temperature. Afterburner effectiveness generally increases with increasing combustion temperature. Exhaust gases entering the HVAF and ESP must be cooled to condense the hydrocarbons and allow their capture.

A survey of asphalt roofing manufacturers and State, regional, and local agencies was conducted to find well-controlled asphalt roofing plants. As a result of this survey, 27 asphalt roofing plants were visited to select the best plants for emissions testing. During the plant visits, opacity readings were taken at control device outlets, the control devices were visually inspected, engineering drawings were examined, and emission reports, when available, were studied. The information collected during the plant inspections was evaluated, and the best-controlled plants were selected for emissions testing.

Tests indicated that an afterburner controlling emissions from a saturator and operating at a temperature above 649°C (1200°F) could achieve about a 93 percent emission reduction. Tests also indicated that an ESP or HVAF could achieve about a 93 percent particulate emission reduction if the saturator exhaust gases are cooled below 60°C (140°F).

An afterburner was the only device tested for control of emissions from blowing stills. The effectiveness of an afterburner in controlling emissions varies with the temperature in the combustion zone. Test data show that an afterburner operating over a temperature range of 760°C to 870°C (1400°F to 1660°F) reduced emissions from the blowing still by 95 percent. The exact relationship between degree of control and operating temperature varies with the concentration of combustible gases in the inlet gas and the size of the control equipment.

The test data show that the emissions from asphalt storage tanks can be effectively controlled by venting the emissions through either a mist eliminator or a particulate control device on the saturator. It is general industry practice for asphalt storage tanks to be vented to the saturator control device when the saturator is operating and to a mist eliminator when the saturator is not operating. However, emissions from the asphalt storage tanks can also be continuously controlled by a mist eliminator or other control device.

Fabric filters are used to control the emissions from the minerals handling and storage operations at some plants in the asphalt roofing industry; however, they have not been tested. These filters have been shown to be effective (through observations of opacity) in reducing particulate emissions from minerals handling and storage operations in the non-metallic minerals industries. Since the minerals handled and the handling and storage operations for the minerals are the same for the two industries, fabric filters are selected as representative of the best technological system for continuous emission reduction from mineral handling and storage operations at asphalt roofing plants.

The proposed standards are based on the pollution control devices that were tested. Other pollution control devices are available that may achieve the level of contol required by the proposed standards. Any control technique that achieves the emission limit outlined in the proposed standards could be used to comply with the standards.

Selection of Regulatory Alternatives

The impacts that varying amounts of emission control would have on the industry, the consumer, and the environment were considered during development of the emission standards. For saturators, each of the three control devices tested demonstrated essentially equal levels of control. For the other facilities, only one type of control device could be tested. Since only one level of control was demonstrated for each respective facility, regulatory alternatives that require control of different combinations of the facilities were defined so that varying impacts could be considered. No new source performance standard (NSPS) would be promulgated under Alternative 1. The facilities would be controlled by existing State regulations. Alternative 2 would require NSPS control for saturators and asphalt storage tanks; Alternative 3 would require NSPS control for saturators, asphalt storage tanks, and asphalt blowing stills; Alternative 4 would require NSPS control for saturators, asphalt storage tanks, and mineral handling and stortage areas; and Alternative 5 would require NSPS control for all affected facilities.

The projected five-year industry growth after proposal of the standards is equal to three medium-size asphalt roofing plants with blowing stills. The environmental and energy impacts of one medium-size plant are one-third the values given below and are based on an HVAF and ESP controlling a saturator, an afterburner controlling a blowing still, a fabric filter controlling mineral handling and storage facilities, and a mist eliminator controlling asphalt storage tanks.

Environmental Impacts

Regulatory Alternative 1, the baseline condition, represents the typical SIP level of control. The actual emissions from individual plants may vary from the emissions allowed by the typical SIP due to differences in State regulations and control methodologies. However, it was judged reasonable to select the typical SIP level of control as the baseline condition for the purposes of comparing environmental impacts. The uncontrolled emissions in the fifth year would be about 2,800 Mg/yr (3,100 tons/yr). The fifth-year environmental impact, if no NSPS is established, would be an increase in nationwide particulate emissions of 770 Mg/yr (850 tons/yr). The fifth-year reduction in emissions beyond SIP control would be 230 Mg/yr (250 tons/yr) for Regulatory Alternative 2; 480 Mg/yr (530 tons/yr) for Alternative 3; 240 Mg/yr (260 tons/yr) for Alternative 4; and 490 Mg/yr (540 tons/yr) for Alternative 5. This would be a reduction of 30 percent for Alternative 2, 62 percent for Alternative 3, 31 percent for Alternative 4, and 64 percent for Alternative 5.

The water pollution impact resulting from adoption of any one of Regulatory Alternatives 2 through 5 would be minimal. Water sprays used to cool inlet fumes of a saturator control device would increase the amount of wastewater to be treated in the fifth year by 30 to 40 m^3/yr (8,000 to 10,500 gal/yr).

Adoption of any of the Regulatory Alternatives 2 through 5 would result in only a small increase in solid waste. The only solid waste generated by the control devices used in the asphalt roofing industry is the saturated filter media from the HVAF.

Dispersion modeling was used to assess the air quality impact of

particulate emissions from asphalt processing and asphalt roofing manufacturing plants under worst-case meteorological conditions. The dispersion analysis used 1964 climatological data for Pittsburgh, Pennsylvania, and Oklahoma City, Oklahoma. Both data sets are reasonably consistent with meteorological conditions representing maximum impact for short stacks. The National Ambient Air Quality Standards (NAAQS) 24-hour maximum primary standard is 260 $\mu g/m^3$, and the 24-hour maximum secondary standard is 150 $\mu g/m^3$. The dispersion analysis for a medium-size asphalt processing and asphalt roofing plant indicated that the primary standard would not be exceeded by a plant controlled under any of the regulatory alternatives but that the secondary standard could be exceeded under Regulatory Alternatives 1, 2, and 4. Adoption of either Regulatory Alternative 3 or Regulatory Alternative 5 would result in a concentration of particulate emissions from an asphalt processing or asphalt roofing plant considerably below the NAAQS 24-hour maximum secondary standard.

Energy Impacts

The construction of three new medium-size asphalt roofing plants controlled by SIP's (Regulatory Alternative 1) would result in an energy usage of 19,100 m^3/yr (120,000 bbl/yr) of oil for all plant operations in the fifth year. The fifth-year increase in energy over Regulatory Alternative 1 would be 20 m^3/yr (140 bbl/yr) of oil for Regulatory Alternative 2; 590 m^3/yr (3,700 bbl/yr) of oil for Alternative 3; 30 m^3/yr (200 bbl/yr) of oil for Alternative 4; 600 m^3/yr (3,800 bbl/yr) of oil for Alternative 5. This is an increase from Regulatory Alternative 1 of 0.1 percent for Alternative 2, 3.1 percent for Alternative 3, 0.2 percent for Alternative 4, and 3.2 percent for Aternative 5.

Economic Impacts

The fifth-year capital and annualized costs for the controls typically being installed by asphalt roofing plants to comply with SIP's would be $1,800,000 and $600,000 respectively. The increase in the fifth-year capital and annualized costs and the increase in the product price if the asphalt roofing manufacturing industry passes through the compliance costs associated with the proposed standards are summarized in the following paragraphs for Regulatory Alternatives 2, 3, 4, and 5.

Regulatory Alternative 2 would result in an increased capital cost of $215,000 and an increased annualized cost of $20,000. This increase in annualized costs could result in a 0.03 percent product price increase for asphalt shingles.

Regulatory Alternative 3 would increase capital costs by $215,000, annualized costs by $59,000, and the product price of asphalt shingles by 0.08 percent.

Regulatory Alternative 4 would increase capital costs by $305,000, annualized costs by $53,000, and the product price of asphalt shingles by 0.07 percent.

Regulatory Alternative 5 would increase capital costs by $305,000, annualized costs by $92,000, and the product price of asphalt shingles by 0.12 percent.

It is reasonable to expect that the industry could pass through these costs for any of the regulatory alternatives. However, if the industry must absorb all the costs for compliance with the proposed standards, the reduction in profit would be 0.4 percent.

A detailed analysis of the economic impact of the alternatives on the asphalt processing and asphalt roofing industry was developed for asphalt roofing plants, where the majority of the asphalt processing and asphalt roofing manufacture occurs. Oil refineries and asphalt processing plants contain only blowing stills and asphalt storage tanks. The regulatory alternatives would require the same controls for blowing stills and asphalt storage tanks at oil refineries, asphalt processing plants, and asphalt roofing plants. Therefore, the costs of meeting the alternatives would be no greater for oil refineries and asphalt processing plants than for asphalt roofing plants. For these reasons, product price increases for Alternatives 2 through 5 should be no greater for products produced at oil refineries than for those produced at asphalt roofing plants.

Historically, oil refineries have demonstrated the ability to pass through cost adjustments on the price of their products. If they have to absorb the costs of compliance with the proposed standards, the reduction in profit would be less than .01 percent. Therefore, there should be no adverse economic impact on oil refineries.

Regulatory Alternatives 2 through 5 are not expected to have an adverse impact on asphalt processing plants. No growth is anticipated in this industry. In fact, the number of asphalt processing plants has been declining in recent years. If new plants are constructed, they are expected to be able to pass through control costs.

Selection of the Alternative for the Standards

Regulatory Alternative 5 would result in the greatest reduction in emissions. Operation of the controls required to comply with Alternative 5 would increase the energy used in all plant operations by only 3.2 percent, and the adverse environmental impacts would be negligible. As discussed previously, the increased control costs would be the same for oil refineries, asphalt processing plants, and asphalt roofing plants. It is expected that all of the costs of compliance with the proposed standards would be passed through. If so, the wholesale product cost would increase by 0.12 percent. The cost to the consumer for a new roof on an average three-bedroom house would be increased by $3. However, if all of the compliance costs were absorbed, the reduction in profit would be 0.4 percent. Because Regulatory Alternative 5 would result in the greatest emission reduction and because, in the Administrator's judgment, the environmental, energy, and economic impacts associated with this emission reduction are reasonable, the Administrator selected Alternative 5 as the basis for the proposed standards.

Consideration of Growth Projections Made by the Industry

Industry representatives commented at the meeting of the National Air Pollution Control Techniques Advisory Committee (December 12, 1979) that EPA had underestimated the growth rate in the industry. They later projected that growth in the industry during the 5 years after proposal of the standards would be: 5 new medium-size plants; 5 new medium-size plants to replace 5 small-size obsolete plants; 5 plants with reconstructed saturators to replace saturators destroyed by fire; and 20 plants each modified to increase production from the saturator by 20 percent. (*1, 2*) The environmental, energy, and economic impacts of the growth projected by the industry have been considered to determine how the industry's growth projections could affect the selection of a regulatory alternative.

The environmental impacts of the growth projected by industry are as follows. The uncontrolled emissions in the fifth year would increase by 7,000 Mg/yr (7,700 tons/yr). If no NSPS is established, the nationwide particulate emissions would increase in the fifth year by 3,200 Mg/yr (3,500 tons/yr). The fifth-year reduction in emissions beyond the SIP level of control would be 960 Mg/yr (1,600 tons/yr) for Regulatory Alternative 2; 2,000 Mg/yr (2,200 tons/

yr) for Alternative 3; 1,000 Mg/yr (1,100 tons/yr) for Alternative 4; and 2,040 Mg/yr (2,250 tons/yr) for Alternative 5. The percent emission reductions for each alternative would be the same as those projected for the EPA growth estimates.

The growth projections made by the industry would increase the amount of wastewater to be treated in the fifth year by 200 to 235 m³/yr (56,000 to 62,000 gal/yr). Water pollution impact would be minimal.

The energy impacts resulting from the growth projections made by industry for the SIP level of control (Regulatory Alternative 1) would result in an energy usage of 48,000 m³/yr (300,000 bbl/yr) of oil for all plant operations in the fifth year. The fifth year increase in energy over Regulatory Alternative 1 would be 78 m³/yr (490 bbl/yr) of oil for Regulatory Alternative 2; 1,500 m³/yr (9,400 bbl/yr) of oil for Alternative 3; 100 m³/yr (650 bbl/yr) of oil for Alternative 4; and 1,530 m³/yr (9,600 bbl/yr) of oil for Alternative 5. The percent increase in energy usage for each alternative would be the same as the percent increase using the EPA growth estimate.

Using the growth projections made by the industry, the fifth-year capital and annualized costs for the controls typically being installed by asphalt roofing plants to comply with SIP's would be $4,500,000 and $1,500,000, respectively. The fifth-year capital and annualized costs would further increase by $1,070,000 and $270,000, respectively, for Regulatory Alternative 2, by $270,000, respectively, for Regulatory Alternative 2, by $1,070,000 and $370,000, respectively, for Regulatory Alternative 4, and by $1,300,000 and $450,000, respectively, for Regulatory Alternative 5.

The product price increase and/or the reduction in profit resulting from compliance with the proposed standards would be the same as previously reported for the EPA growth projection.

The growth projections made by the industry would not change the solid waste and noise impacts previously calculated by EPA.

Under either the industry or the EPA growth projections, Alternative 5 would result in the greatest reduction in emissions. The production cost increases and/or the percent reductions in profit associated with achieving the emission standards would be the same. Under either projection, the impacts of Alternative 5 on energy and the environment would be reasonable. For these reasons, the selection of Regulatory Alternative 5 as the basis for the proposed standard is not changed.

Selection of the Format of the Proposed Standards

Standards for asphalt roofing plants could be expressed either as concentration standards, which limit emissions per unit volume of exhaust gases discharged to the atmosphere, or as mass standards, which limit emissions per unit of production. In selecting a format for the proposed standards, the cost of compliance testing and the effect on reducing the mass emissions were considered.

In most cases, concentration standards are preferable to mass standards because the concentration format requires fewer calculations and measurements and is, therefore, less costly. Concentration standards, however, usually require correction factors to prevent dilution of exhaust gases as a means of meeting the standards. Excess air may be introduced into the exhaust flow either by poorly designed hooding or by lekage through doors and duct joints. Also, two of the control devices upon which the proposed standards are based may use additional air for cooling the gases before they enter the contol device. The quantity of air used for cooling would vary according to ambient temperature, temperature of the asphalt in the saturator, and the location of the control device. Therefore, development of the correction factor necessary for the concentration standards would be difficult. For this reason, concentration is not a desirable format.

Mass standards expressed as allowable emissions per unit of production require measurement of the production rate as well as of the concentration of emissions in the control equipment exhaust systems. Since asphalt processing and asphalt roofing production figures are readily available and plant personnel would not have to monitor production continuously, this format would not increase the cost of compliance testing above the cost of other formats. Dilution air would have no effect on the emission results. For these reasons, mass per unit of production is selected as the format for expressing the standards of performance for asphalt processing and asphalt roofing plants. The proposed standards are expressed as kilograms of pollutant per megagram (kg/Mg) of product for the saturator and as kilograms of pollutant per megagram (kg/Mg) of asphalt charged for the blowing still.

An opacity format for visible stack emissions for all facilities is proposed to aid enforcement and operating personnel in determining that emission control devices are properly maintained and operated. A visible emissions format is selected as the basis of the standard for the saturator capture system to ensure that a well-designed and well-operated capture system is used.

Selection of Numerical Emission Limits

Four saturators were tested for particulate emissions. Two of the saturators were controlled by a high velocity air filter (HVAF), one by electrostatic precipitators (ESP), and one by afterburners (A/B).

The saturator at plant A was controlled by two ESP modules operating in parallel. The average of three test runs conducted at or below a filtration temperature of 52° C (126° F) on this unit showed an emission rate of 0.019 kg/Mg (0.038 lb/ton). The fourth test run, shown in the BID, was conducted at a filtration temperature above the 52° C (126° F) temperature specified in Method 26 and, therefore, was not used in determining the average emission rate.

Two afterburners operating in parallel controlled the emissions from the saturator and asphalt storage tanks at plant B. A performance test consisting of three runs was completed on each of the afterburners. One afterburner was operating at 538° C (1000° F) and the other at 649° C (1200° F). The emissions from the afterburner operating at 538° C (1000° F) averaged 0.035 kg/Mg (0.07 lb/ton). The emissions from the afterburner operating at 649° C (1200° F) averaged 0.015 kg/Mg (0.03 lb/ton). The combined emissions from the two afterburners at plant B averaged 0.045 kg/Mg (0.09 lb/ton) during the performance test. If both afterburners had been operated at the higher temperature, 649° C (1200° F), the control efficiencies would have been approximately equal, and the average of the emissions from both afterburners would have been approximately 0.025 kg/Mg (0.05 lb/ton).

At plant C the emissions from the saturator and asphalt storage tanks are controlled by an HVAF. A performance test consisting of three test runs was conducted at this plant; the emissions averaged 0.026 kg/Mg (0.052 lb/ton).

An HVAF controlled the emissions from the saturator at plant D. The emission rate determined by the performance test consisting of three test runs averaged 0.035 kg/Mg (0.07 lb/ton).

The HVAF, ESP, and afterburner (operated at the higher temperature) all control mass emission rates to between 0.015 and 0.035 kg/Mg (0.03 and 0.07 lb/ton). Each of these control devices could meet a standard set at 0.04 kg/Mg (0.08 lb/ton). Therefore, the emission limit for the saturator and asphalt storage tanks

vented to the saturator control devices has been set at 0.04 kg/Mg (0.08 lb/ton), a level which can be achieved by the HVAF, ESP, or afterburner. This emission limit is based on data collected during production of 106.6-kg (235-lb) shingles. The proposed standard for a saturator producing shingles or mineral surfaced roll roofing requires that the performance tests be conducted while the saturator line is producing a 106.6-kg (235-lb) shingle in order to be consistent with the procedure used during the emissions tests.

A second emission limit for saturators in mass per unit of production is necessary because some asphalt roofing plants produce only saturated felt and roll roofing which are lighter than the shingles that were being produced during the emissions testing program. The uncontrolled mass of particulate emissions per unit time is the same from a saturator producing shingles as from a saturator producing saturated felt if the felt feed rate and asphalt temperature are the same. For saturators operating at the same felt feed rates, the weight of asphalt shingle produced is about 10 times greater than the weight of saturated felt produced. The particulate emissions rate for a saturator producing 106.6-kg (235-lb) shingles was divided by the production rate of a roofing line producing a 6.8-kg (15-lb) saturated felt to derive the proposed emission limit of 0.4 kg/Mg (0.8 lb/ton) for saturators producing a 6.8-kg (15-lb) saturated felt and smooth-surfaced roll roofing.

There was only one blowing still considered to be well controlled and suitable for emissions testing. Two performance tests, each consisting of three runs, were conducted at the afterburner controlling emissions from the blowing still at Plant E. The emission rate for the three saturant blows averaged 0.24 kg/Mg (0.48 lb/ton) of asphalt charged to the still. The emission rate for the three coating blows averaged 0.44 kg/Mg (0.88 lb/ton) with a high individual reading of 0.55 kg/Mg (1.1 lb/ton) of asphalt charged to the still. To allow for possible variations since only one blowing still was tested, the Administrator determined that the emission limit for blowing stills would be set above the highest individual reading observed during the two performance tests. Therefore, the emission limit for the blowing still has been set at 0.60 kg/Mg (1.2 lb/ton) of asphalt charged during conventional blowing, a level which can be achieved by an afterburner during either a coating or a saturant blow. The emission limit provides a 35 percent margin above the average of the individual test runs.

Industry representatives commented that three conditions may influence emissions and the achievability of the proposed emission standards for blowing stills and questioned whether the test results at Plant E are representative of the entire industry.(*1*) These conditions are:

1. The use of ferric chloride as a catalyst in the blowing stills,
2. The use of asphalt flux from different crudes, and
3. The use of No. 2 or No. 6 fuel oil in the afterburner. EPA has considered each of these conditions as discussed in the following paragraphs.

Industry representatives stated that by 1985 the use of a catalyst in the air blowing of asphalt may be widespread. They questioned whether the proposed emission limit, which is based on conventional blowing, would be achievable if catalytic blowing is used. A catalyst is added during air blowing to increase reaction rates and to achieve the desired properties of the coating asphalt. There are no data to quantify the emissions from catalytic blowing of asphalt or from an afterburner controlling the emissions from catalytic blowing. No well-controlled catalytic blowing stills that are suitable for testing are known to exist. However, available information on the operating characteristics of blowing stills and afterburners can be used to assess the achievability of the proposed emission limit when catalytic blowing is used.

In catalytic blowing, a ferric chloride catalyst is added to the still in amounts ranging from 0.2 to 0.5 percent by weight of asphalt charged to the still.(*4*) For ferric chloride to be emitted from the still, it would have to be contained in the liquid asphalt droplets that may be entrained in the gases leaving the still. Liquid drops in the fume that result from condensation of vaporized hydrocarbon material would not contain any ferric chloride. All blowing stills include knock-out boxes or cyclones to remove some of the liquid drops from the fume before incineration. The liquid captured by the knock-out box generally has a viscosity similar to a fuel oil. This indicates that the majority of particulate emissions result from the condensation of light compounds in the asphalt flux and not from entrained liquid droplets. If large amounts of entrained asphalt flux were present, the material captured would have a higher viscosity. Therefore, if tests were done, EPA expects that very little, if any, ferric chloride would be measured in the emissions from the afterburner. Since test data are not available and since afterburners, the control device on which the standard is based, would not control ferric chloride, the Administrator has decided to allow an increment in the standard for catalytic blowing.

In the unlikely event that all of the uncontrolled emissions during the emissions test at Plant E resulted from entrainment of liquid asphalt droplets and if these asphalt droplets contained 0.5 percent (the maximum amount used by industry) by weight of ferric chloride, the ferric chloride emissions would be 0.07 kg/Mg (0.14 lb/ton) of asphalt.

It is possible that ferric chloride will be converted to ferric oxide in the afterburner. If this happens, the mass of emissions would not change because the molecular weights of these compounds are equal. If the proposed emission limit for blowing stills were increased by 0.07 kg/Mg (0.14 lb/ton), the allowable emissions from a blowing still of a medium-size plant would increase from 25.4 to 26.8 Mg/yr (28 to 29.5 tons/yr). The amount by which controlled emissions would be reduced below the baseline level would be 97.5 Mg/yr (107.5 tons/yr) instead of 99 Mg/yr (109 tons/yr). These changes in the benefits of the proposed standard would be relatively small. After considering these factors, the Administrator concluded that an increment for catalytic blowing based on worst-case conditions and the emission test data from Plant E would be reasonable. The uncontrolled emissions at another plant could be higher than those at Plant E. However, after considering the small probability of finding ferric chloride in the emissions at a plant using catalytic blowing, the Administrator concluded that basing the increment on the emissions at Plant E is sufficient to ensure the achievability of the proposed emission limit. Therefore, the proposed emission limit for catalytic blowing is 0.67 kg/Mg (1.34 lb/ton) of asphalt charged to the still.

Industry representatives also expressed concern that catalytic blowing would change the characteristics of the particulate emissions and, therefore, affect the achievability of the proposed emission limit. (*1, 2*) EPA has considered the impacts of these possible changes in the emission characteristics on the achievability of the proposed emission standard as discussed in the following paragraphs.

Information gathered from the industry indicates that during catalytic blowing, the total mass of volatile organic emissions per unit of asphalt production and the flow rate of the blowing air will be the same as during blowing without a catalyst. (*4*) The blowing time may be reduced by as much as two-thirds. (*4*) Therefore, in the worst case, the mass per unit time and

the concentration of combustible particulate in the fume may be approximately three times higher than those measured when no catalyst is used. Even though the particulate emissions per unit time could triple, the total mass of particulate emissions per unit of production would remain the same. Therefore, the afterburner efficiency required to meet the proposed emission limit, which is in mass of emissions per unit of production, would be the same as that required if no catalyst were used. A well-designed afterburner could easily achieve the proposed emission limit under the worst-case conditions for catalytic blowing.

The fuel and the capital costs for the afterburner controlling catalytic blowing would differ from the costs reported for the model plants. The fuel costs reported for the model plant include enough fuel to raise the temperature of the fume to 760°C (1400°F) without taking any credit for the heating value of the particulate in the fume. For the plant tested, the fume provided approximately one-third of the total energy consumed. This method of estimating fuel costs was used to assure that the model plant fuel costs would represent worst-case conditions where the concentration of particulate in the fume is very small. Since the concentration of particulate in the fume from catalytic blowing could be as much as three times higher than the concentration in a fume from conventional blowing, the heating value of the catalytic blowing fume alone should be sufficient to maintain the afterburner at 760°C (1400°F). Therefore, if the combustible particulate in the fume triples, the fuel cost for the afterburner on a catalytic blowing still would be considerably less than the fuel cost for the afterburner at the model plant.

The capacity of an afterburner controlling catalytic blowing will have to be larger than the capacity of an afterburner controlling non-catalytic blowing. In the worst case, catalytic blowing reduces the blowing time by two-thirds and triples the rate of emissions. In this case, and assuming an uncontrolled emission rate equal to that at Plant E, the required afterburner capacity might be triple the capacity of the afterburner required for the losses from the still at Plant E or double the capacity of the model plant afterburner. (The model plant afterburner was 1.5 times the size needed for conditions at Plant E.) Doubling the afterburner capacity would be necessary to handle the mass of material just to meet the baseline condition (Regulatory Alternative 1) which is based on typical SIP's. The SIP's limit the mass rate of emissions to a specified level, e.g., 46 lbs/h for a medium-size plant. Doubling the capacity of the model plant afterburner at a medium-size plant would increase the capital cost of the afterburner from $121,000 to $172,000.(3) The capital charges resulting from the increased investment would increase baseline production costs from $13.480 to $13.484 per square of roofing shingle. The production cost for achieving the proposed emission limit (Regulatory Alternative 5) would increase from $13.500 to $13.504 per square of roofing shingle. These costs are reasonable and would not alter the selection of Regulatory Alternative 5 as the basis for the proposed standards. The incremental costs in achieving the proposed emission limit over baseline emission levels would not be increased.

Since the proposed emission limit has been adjusted to allow for emissions of an inorganic catalyst and since the adjusted limit can be achieved at a reasonable cost, the Administrator has determined that no additional adjustment in the proposed emission limit is needed for catalytic blowing.

Industry representatives stated that blowing asphalt fluxes from different crude oils may result in different emission rates. They questioned the achievability of the proposed emission limit when asphalt fluxes different from those used in the emissions testing program are blown. EPA has considered the impact of blowing asphalt fluxes from various crude oils on the achievability of the proposed emission limit as discussed in the following paragraphs.

Data from industry show that losses of material (measured at the outlet of the still) from blowing asphalt fluxes from different crude oils range from 1.0 to 3.9 percent of the asphalt charged to the still.(4) The flux used during the emissions test at Plant E was labeled a 2.0 percent volatility crude. The uncontrolled emissions during the test were measured at the outlet of the cyclone and equaled 1.3 percent of the asphalt charged to the still. In the worst case, without a cyclone, when uncontrolled emissions are 3.9 percent of the asphalt charged, an afterburner capable of destroying 98.5 percent of the particulate emissions would be required to achieve the proposed emission limit. The worst case (losses of 3.9-percent of asphalt flux) is not likely to occur. For a medium-size plant, a 3.9 percent loss of asphalt from the still would cost about $480,000 per year at current asphalt prices. Therefore, there is a strong incentive to use low-cost cyclones or knock-out boxes to recover the material that is lost from the still. Even if these devices were only 25 percent efficient, the afterburner efficiency required to achieve the emission limit would be reduced to 98 percent. Studies on afterburners show that a well-designed afterburner can achieve efficiencies in excess of 98.5 percent.(5) In fact, efficiencies approaching 100 percent can be achieved.(5) If the emission rates are tripled, the concentration of combustible particulates in the fume will also triple, making it easier to achieve higher afterburner efficiencies than those achieved during the test at Plant E.

The cost of achieving the proposed emission limit might increase above the costs reported for the model plants if the uncontrolled emissions are greater than those tested at Plant E. In the worst case (assuming no cyclone) the uncontrolled emissions would be triple those tested at Plant E. The fuel costs reported for the model plant would not increase because the model plant costs include enough fuel to maintain the afterburner at 760°C (1,400°F) without assuming any credit for the heating value of the fume. Any increase in the temperature required for a higher efficiency could come from the heating value of the fume, which would be sufficient to raise the combustion temperature from 760° to 930°C (1,400° to 1,700°F) without increasing the fuel consumption. Studies show that such an increase in temperature alone may be sufficient to achieve a 98.5 percent efficiency in a well-designated afterburner.(5)

The capital costs would increase above the costs reported for the model plant because a larger afterburner would be required to achieve a higher capacity and because a longer residence time may be needed to achieve the required efficiency. For the new capacity, the afterburner size may be triple the size needed for the test condition at Plant E or double the size of the model plant afterburner. (The model plant afterburner is 1.5 times the size needed for Plant E.) The afterburner cost for a medium-size model plant would increase from $121,000 to $172,000 if the size of the afterburner is doubled.

The higher afterburner capacity would be necessary to meet the baseline condition (typical SIP's) because the SIP's limit the mass rate of emissions. The increase in capital charges for the larger afterburner would increase the production costs associated with achieving the baseline emission levels (Regulatory Alternative 1) from $13.480 to $13.484 per square of roofing shingle. The production costs associated with

achieving the proposed emissions standard would increase the $13.500 to $13.504 per square of roofing shingle. A further increase in capital cost may result if it is necessary to increase the afterburner efficiency. For example, if emissions per unit of asphalt charged are tripled, the afterburner efficiency would need to increase to meet either the SIP level of control or the proposed standard. Since the SIP emission limits are lower than the proposed standard, the increased efficiency required to meet the SIP level of control might be achievable without increasing the size of the afterburner (e.g., by temperature adjustment). However, the increased efficiency needed to meet the proposed standard might require increasing the residence time in the afterburner. Therefore, to assure a worst-case cost analysis, the capital cost for a larger afterburner to achieve the increased residence time is charged to the incremental cost of achieving the proposed emission limit over the baseline. The model plant afterburner is designed for a residence time of 0.5 second. Control efficiencies generally increase with residence time up to 1.0 second.(7) In the worst case, the fume residence time in the model plant afterburner might need to be doubled to provide a 98.5 percent control efficiency. This would raise the capital cost from $172,000 to $244,000.(3) The increase in capital charges, resulting from the higher investment cost for compliance with the proposed emission limit, would increase production costs in a medium-size plant from $13.504 to $13.510 per square of roofing shingle. These costs for compliance could result in a product price increase of 0.19 percent or, if all costs are absorbed, a reduction in profit of 0.6 percent. These economic impacts would not reduce growth in the industry and are judged by the Administrator to be reasonable.

Catalytic blowing of a high-loss flux, the "extreme" worst-case situation could require an afterburner with 6 times the capacity of the medium-size model plant or 3 times the capacity of an afterburner for a high-loss flux. It is not likely that new plants will be designed that would allow the high losses because of the value of the material that could be recovered. Even if this "extreme" worst case existed, the afterburner fuel cost would decrease and the afterburner capital costs would increase. The increase in capital costs for an afterburner controlling emissions from a medium-size model plant would be $176,000. Because the need for this increase is uncertain and because it was analyzed only for an "extreme" worst-case condition, the increase in cost has been charged to the cost of achieving the standard. This increase in capital charges for the larger afterburner would increase the production costs associated with achieving the proposed standard (Regulatory Alternative 5) from $13.50 to $13.513 per square of roofing shingle. These costs for compliance could result in a product price increase of 0.24 percent, or, if all costs are absorbed, a reduction in profit of 0.8 percent. These economic impacts would not reduce growth in the industry and are judged by the Administrator to be reasonable.

Because well-designed control equipment could achieve the proposed emission limit without adverse economic impacts, the Administrator has determined that the proposed emission limit would apply to blowing stills processing asphalt fluxes from any crude oil.

Industry representatives have stated that the use of No. 6 and No. 2 fuel oil in an afterburner will affect controlled emissions because of the ash content of fuel oil and have questioned the achievability of the proposed standard when fuel oil is used. The afterburner controlling the emissions from the blowing still during the tests at Plant E was fired with natural gas.

The American Petroleum Institute (API) specifications for No. 6 fuel oil show that the ash content ranges from 0.01 to 0.05 percent.(8) The fuel consumption rate of the model plant afterburner (a conservative estimate because the heating value of fume was not considered in the calculation) was used to calculate the increased particulate resulting from the ash content of No. 6 fuel oil. The increased particulate would range from 0.0007 to 0.036 kg/Mg (0.0014 to 0.072 lb/ton) of asphalt charged to the still.(3) The worst-case conditions occur when No. 6 fuel oil with a 0.5 percent ash content is fired in the afterburner at the model plant fuel consumption rate. The Administrator has decided to add an increment to the proposed blowing still emission limits to allow for the worst-case conditions. Therefore, the proposed blowing still emission limits when No. 6 fuel oil is used are 0.64 kg/Mg (1.28 lb/ton) for conventional blowing and 0.71 kg/Mg (1.42 lb/ton) for catalytic blowing.

The API specifications show that No. 2 fuel oil has an ash content of <0.01 percent.(8) Based on the fuel consumption rate of the model plant afterburner, the contribution of ash from No. 2 fuel oil will be <0.0006 kg/Mg (<0.0012 lb/ton) of asphalt charged to the still.(3) This increase in particulate is negligible; therefore, no increment is added to the proposed blowing still emission limits when No. 2 fuel oil is fired in the afterburner.

Selection of Visible Emission Limits

An opacity standard is proposed for all the affected facilities to help ensure proper operation and maintenance of control systems on a day-to-day basis. EPA Reference Method 9 was used to take opacity readings for saturators and blowing stills at plants A, B, C, D, and E during particulate emission tests. Opacity readings for storage tanks were taken only at plant F. The 6-minute average opacity readings of the emissions from the saturators ranged from 0 to 16 percent. All the opacity readings for the emissions from the blowing still were 0 percent. All of the 6-minute average opacity readings for the emissions from the asphalt storage tanks were 0 percent.

In a study of the non-metallic minerals industry, EPA Reference Method 9 was used to take opacity readings at the outlet of fabric filters controlling emissions from handling and storage of materials (sand, talc, mineral stabilizer, and granules) similar to those used in the asphalt roofing industry. The opacity emission data from the "Draft Background Information Document for Non-Metallic Mineral Processing Plants" were used to establish the proposed opacity emission limit for mineral handling and storage facilities in the asphalt roofing industry. Ninety-two percent of the 6-minute averages showed zero percent opacity. The remaining 6-minute averages were greater than zero but less than or equal to 1 percent opacity.

The proposed opacity standards are set at or above the upper limit of the opacity data collected during the emissions testing program. The proposed standards are 0 percent opacity for blowing stills, 20 percent opacity for saturators, 0 percent opacity for asphalt storage tanks, and 1 percent opacity for minerals handling and storage.

A fugitive emission standard is proposed to ensure good capture of fugitive emissions from the saturator. During the emission testing program, several canopy hoods and one total enclosure hood were observed. Only the total enclosure hood achieved good capture of fugitive emissions. Total enclosure hoods can be used for new, modified, or reconstructed facilities. Therefore, total enclosure hoods were selected to represent the best technological system for continuous capture of fugitive emissions from saturators.

Only the total enclosure hood at plant B was available for testing at the time the emissions testing program was conducted. Observations of visible emissions at this plant form the basis of the proposed emission standard. During the emission testing program at plant B, the consecutive periods of observations taken while the saturator was operating under representative conditions (when the line speed was ≥80 percent of usual daily line speed) totaled 5.5 hours. Fugitive emissions were visible for not more than 16.7 percent of the time during any period of consecutive observations totaling 60 minutes, 12 percent of the time during any period of consecutive observations totaling 120 minutes, and 8 percent of the time during the full 5.5 hours of observations.

A period of consecutive observations, taken during representative operating conditions, totaling 60 minutes was chosen as a sufficient period of time to assess the performance of the capture system. During the test the highest average reading for such a 60-minute period was 16.7 percent. The proposed emission limit allows visible emissions from saturators for 20 percent of any period of consecutive observations, during representative operating condition, totaling 60 minutes.

Modification/Reconstruction Considerations

The proposed standards of performance would apply to saturators, blowing stills, asphalt storage tanks, and mineral handling and storage facilities. Any physical or operational change that increases the emissions to the atmosphere in kilograms per hour from any one of these facilities could be considered a modification according to Section 60.14 of Title 40 of the Code of Federal Regulations (CFR) and if so would subject that facility to the standards of performance. There are several physical and operational changes that may increase emissions to the atmosphere but are exempt from the modification provision. One such exemption is for a production rate increase that is accomplished without a capital expenditure. Asphalt roofing production lines are designed to operate at maximum line speeds (e.g., 600 feet per minute). Initial startup and operation of the production line is at a lower speed that the design capacity. Typically, the line speed is gradually increased, sometimes over a period of years, to approach the designed line speed. Because the line was originally designed for a maximum attainable line speed, there is no capital expediture, as defined in Section 60.14 Title 40 CFR, associated with any increases in line speed up to the designed capacity. These production rate increases are not considered to be modifications.

Other physical and operational changes which are exempted from the modification provision are maintenance, repair, and replacement determined to be routine; an increase in the hours of operation; and the addition or use of an air pollution control device that is environmentally beneficial. The use of alternative fuel or raw material, such as a different asphalt flux, is not a modification if the facility was designed to accommodate that alternative use. Physical and operational changes which do not increase the emission rate to the atmosphere would not be considered as modifications and therefore would not be covered by the standards.

"Reconstruction" means the replacement of components of an existing facility to such an extent that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility and that it is technologically and economically feasible to meet the applicable standard set forth in Part 60. Reconstruction as defined in § 60.15(b) of title 40 CFR Part 60 would apply to each affected facility individually. For example, if a saturator is changed to the extent that it is considered reconstructed and is, therefore, required to conform to the proposed standards, this woud not cause the other facilities of an asphalt roofing plant to be subject to the provisions of the proposed standards.

It is technologically feasible and economically reasonable to install the same particulate control devices on modified or reconstructed facilities as would be installed on newly constructed facilities. Therefore, no special exemptions for modified and reconstructed facilities are included in the proposed standards of performance.

Selection of Performance Test Methods

Reference Method 5, "Determination of Particulate Emissions from Stationary Sources," was examined to determine its applicability to the asphalt processing and asphalt roofing industry. It was decided that this method was not suitable for determining particulate emissions from asphalt processing and asphalt roofing plants. Therefore, a program was initiated to develop a test method for particulate emissions from sources in these plants. The test method developed was Reference Method 26, "Determination of Particulate Emissions from the Asphalt Processing and Asphalt Roofing Industry." Emission measurements were conducted at seven asphalt roofing plants using this method.

In summary, problems associated with the use of Method 5 for asphalt processing and asphalt roofing plants were: (1) The filtration temperature was too high; (2) there was no precollector filter to reduce oil droplet loading; (3) the cleanup reagent did not effectively dissolve baked-on oil and asphalt; (4) sample loss occurred during analytical procedures; and (5) there was inadequate recovery of samples from condensed water collected in the cyclone collection flask. The following paragraphs explain how Method 26 alleviates the problems associated with Method 5.

At the collection temperature specified in Method 5, 121°C (250°F), a portion of the liquid particulate from asphalt processing and asphalt roofing plants vaporizes and passes through the particulate sampling device as a gas. The change of filtration temperature to 52°C (126°F) in Method 26 reduces this problem and provides a consistent basis for evaluating different control systems and the emissions from different plants. The data used in setting the emission limits proposed for saturators were collected at or below the 52°C (126°F) filtration temperature.

In Method 26 a precollector filter is used to reduce the oil droplet loading on the primary filter, which prevents oil from seeping through the glass fiber filter mat during periods of high droplet concentrations.

The cleanup reagent specified in Method 26 is 1,1,1-trichloroethane (TCE). The acetone used in Method 5 does not remove all baked-on oil and tar from the sampling apparatus. TCE is effective in dissolving the baked-on oil and asphalt.

The analytical procedure developed for Method 26 minimizes sample loss through evaporation. Experimental results showed that the weight loss from the evaporation process was minimal.

Collection and analytical procedures for condensed water were developed for Method 26. When Method 5 was used, condensation occurred in the filtration section of the sample train when the moisture content of the stack gases was above 10 percent. These conditions occurred during blowing still tests but not during saturator tests.

Method 26 is an effective test procedure for sampling emissions from asphalt processing and asphalt roofing plants and is being proposed with the proposed standards as the performance test method for particulate emissions from asphalt processing and asphalt roofing plants.

Reference Method 26, "Determination of Particulate Emissions from the

Asphalt Processing and Asphalt Roofing Industry," specifies: (1) Measurement system design criteria; (2) measurement system performance specifications and performance test procedures; and (3) procedures for emission sampling. Two hours per run is proposed as the sampling time for emission testing because this is sufficient time to collect a representative sample from asphalt processing and asphalt roofing plants. Each performance test would consist of three runs. Method 26 is sufficiently similar to Method 5 that test personnel experienced with Method 5 should have no difficulty obtaining reliable data.

Reference Method 22, "Visual Determination of Fugitive Emissions From Material Processing Sources," is being proposed as a performance test method to determine compliance with standards of performance limiting fugitive emissions from asphalt saturator capture systems. Reference Method 22 was developed because fugitive emissions from saturator capture systems may occur within asphalt roofing plant buildings where lighting and background conditions needed for opacity readings are not attainable.

Reference Method 9, "Visual Determination of the Opacity of Emissions from Stationary Sources," is selected as a test method to determine compliance with standards of performance limiting particulate emissions from asphalt processing and asphalt roofing plants. Reference Method 9 is used to read opacity of emissions from exhaust stacks of control devices which are outside the plant. Opacity readings can be used to indicate whether a control device is being properly operated and maintained.

Selection of Monitoring Requirements

Monitoring requirements can provide a convenient means for enforcement personnel to ensure that emission control systems are properly operated and maintained. For blowing stills and saturators, the most straightforward means of ensuring proper operation and maintenance of the control device would be to monitor particulate emissions. However, no continuous particulate monitors are available for this industry. Resolution of the sampling problems and development of performance standards for continuous particulate monitors would entail a major development program. For these reasons, continuous monitoring of particulate emissions from the asphalt processing and asphalt roofing industry is not required by the proposed standards.

Opacity can be used as an indication of poor operation of the control device. If the opacity from the control device exceeds the proposed limit, it is an indication that a control device is not operating properly and may not be meeting the particulate emission limit. However, the absence of opacity does not always indicate that the emission limit is being met.

The only instrument for continuous measurement of opacity is the transmissometer which is not ideally suited to the measurement of opacity in the effluent gas streams at asphalt processing and asphalt roofing plants. The particulate emissions from these plants are liquid hydrocarbon mixtures that are converted to gases by the temperatures that are present in th effluent gas streams. The gaseous emissions would not be detected by the transmissometer, but will recondense and be visible in the atmosphere. For these reasons, continuous monitoring of opacity is not required.

The proposed standards would require continuous recording of the operating temperature which is critical to the effectiveness of the control devices upon which the proposed standards are based. This requirement would apply to the temperature in the combustion zone of an afterburner and to the inlet temperature for a high velocity air filter (HVAF) or an electrostatic precipitator (ESP). If the average temperature over any 6-hour period of operation was below that measured during the performance test for afterburners or above that measured for HVAF's or ESP's, by definition excess emissions would have occurred. The plant owner or operator would have to report the occurrence of excess emissions in a quarterly report. A 6-hour averaging time for temperature was selected because this corresponds to the period of time required for a performance test. Other parameters to be monitored may be specified by the Administrator if the temperature of a control device used to meet the standards is not critical to the performance of the device.

Comments were received from the industry contending that if a performance test on a saturator control device (HVAF or ESP) were run during cold weather, the operating temperature measured may be lower than if the performance test were run in warm weather. The temperature value that is measured during a performance test in which the numerical emission limit is met would be the temperature value used to determine excess emissions that must be reported. If the performance test were run in cold weather, the extra cooling by the ambient air might cause the established temperature to be lower than is actually necessary to meet the proposed emission limit. Further, this temperature value might be impossible to maintain in warm weather. Therefore, a temperature value established in a cold weather performance test may actually be lower than the temperature at which the inlet gases should be maintained to meet the emission limit. The temperature attainable during warm weather may indicate excess emissions when in fact the emission levels are not in excess of the numerical emission limit. For this reason, the proposed standards allow plant owners and operators the option of repeating the performance test to establish a new value for the temperature which indicates the occurrence of excess emissions.

Records of temperature measurements would have to be retained for at least 2 years following the date of the measurements by owners and operators subject to this subpart. This requirement is included under § 60.7(d) of the General Provisions of 40 CFR part 60.

Impacts of Reporting Requirements

The proposed standards would require asphalt processing and asphalt roofing plants to submit reports to the Administrator so that he can ensure compliance with the regulation. The proposed standards would require four types of reports. First, there are notification reports required under the General Provisions that would enable the Agency to keep abreast of facilities subject to the standards of performance. Second, there are reports of performance test results. Third, there are performance evaluations of the temperature monitoring and recording system. Fourth, there are quarterly reports of excess emissions which would permit the Agency to determine whether the emission control system installed to comply with the standards is being properly operated and maintained.

Section 60.7(b) of Part 60 Subpart A of the Code of Federal Regulations (CFR) requires an owner or operator of a plant to maintain records of all startups, shutdowns, or malfunctions of an affected facility. Section 60.7(c) requires submittal of quarterly reports of excess emissions and identification of any periods of excess emissions from any affected facility when startups, shutdowns, and malfunctions occurred. A primary purpose of maintaining records of startups, shutdowns, and malfunctions at a plant is for later use in the quarterly reports identifying the occurrence and duration of excess emissions.

Clarification of what constitutes startup, shutdown, and malfunction as opposed to normal operation in asphalt roofing and asphalt processing plants is necessary to avoid unnecessary and burdensome recordkeeping.

Air blowing of asphalt is usually a batch operation. Saturant and coating asphalts are produced by blowing air through hot asphalt flux in a blowing still. A minimum of four batches will be blown each operating day at a typical asphalt roofing plant. The beginning and ending of a batch is considered to be normal operation and excess emissions are not expected to occur during these times. Therefore, it is not necessary to record the beginning and ending of each batch as startup and shutdown.

The production of saturated felt, roll roofing and shingles is a continuous process. Saturated felt is produced by applying hot saturant asphalt to a felt made of paper. Coating asphalt is then applied to the saturated felt to produce roll roofing. Roll roofing is further processed by adding talc to one side of the felt and mineral aggregate to the other side to produce asphalt shingles. The typical asphalt roofing production line operates 16 hours per day, 5 to 6 days per week, and 50 weeks per year. Breaks in the felt may cause temporary halts in production several times during each operating day. However, the emission control equipment would operate continuously with no increase of emissions to the atmosphere. Since temporary halts in the production line to repair breaks in the felt are considered to be normal operation and would not by themselves result in excess emissions, they do not need to be recorded as startup, shutdown, or malfunction.

The resources needed by the industry to maintain records, to collect data, and to prepare the reports through the first 5 years would be about 3,200 man-hours. These figures are based on the assumption that the proposed standards would cover three new, modified, or reconstructed asphalt roofing manufacturing plants, with blowing stills, through the first 5 years.

Using the growth projections made by industry representatives, the resources needed by the industry to maintain records, to collect data, and to prepare the reports through the first 5 years would be about 30,000 man-hours.

Public Hearing

A public hearing will be held to discuss the proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the Addresses section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Central Docket Section address given in the Addresses section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (see Addresses section of this preamble).

Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in the development of this proposed rulemaking. The principal purposes of the docket are (1) to allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review.

Miscellaneous

As prescribed by Section 111, establishment of standards of performance for affected facilities in asphalt roofing plants, asphalt blowing stills and asphalt storage tanks in oil refineries and asphalt processing plants was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues, and on the proposed test methods.

Comments are specifically invited on the effects of different crude oils and the catalytic blowing of asphalt on particulate emissions. Any comments submitted to the Administrator on the effects of different crude oils and catalytic blowing of asphalt on particulate emissions should contain emission test data pertinent to an evaluation of the magnitude and severity of its impact and suggested alternative courses of action that would avoid this impact.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

Although there may be emission control technology available that can reduce emissions below those levels required to comply with standards of performance, this technology might not be selected as the basis of standards of performance due to costs associated with its use. Accordingly, standards of performance should not be viewed as the ultimate in achievable emission control. In fact, the Act requires (or has the potential for requiring) the imposition of a more stringent emission standard in several situations.

For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources located in nonattainment areas, i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed in an area which exceeds the National Ambient Air Quality Standard (NAAQS) must reduce emissions to the level which reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3). The statute defines LAER as that rate of emissions based on the following, whichever is more stringent:

> 1. The most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or
> 2. The most stringent emission limitation which is achieved in practice by such class or category of source.

In no event can the emission rate exceed any applicable new source performance standard (Section 171(3)).

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources (referred to in Section 169(1)) employ "best available control technology" (BACT) as defined in Section 169(3) for all pollutants regulated under the Act. Best available control technology must be determined on a case-by-case basis, taking energy, environmental, and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any

pollutants which will exceed the emissions allowed by any applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, State Implementation Plans (SIP's) approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of NAAQS designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reduction than those required by standards of performance for new sources.

States are free under Section 116 of the Act to establish even more stringent emission limits than those established under Section 111 or those necessary to attain or maintain the NAAQS under Section 110. Accordingly new sources may in some cases be subject to limitations more stringent than standards of performance under Section 111. Prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

This regulation will be reviewed four years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance under Section 111(b) of the Act. An economic impact assessment was prepared for the proposed regulations and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to insure that the proposed standards would represent the best system of emission reduction considering costs. The economic impact assessment is included in the background information document.

Dated: November 10, 1980.

Douglas M. Costle,

Administrator.

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8. R. H. Perry and C. H. Chilton. Chemical Engineers' Handbook. 5th Ed. New York, McGraw-Hill, 1969. p. 9-10.

It is proposed that 40 CFR Part 60 be amended as follows:

1. By adding Subpart UU as follows:

Subpart UU—Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture

Sec.

60.470 Applicability and designation of affected facilities.
60.471 Definitions.
60.472 Standards for particulate matter.
60.473 Monitoring of operations.
60.474 Test methods and procedures.

Authority: Sec. 111, 301(a), Clean Air Act, as amended, (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart UU—Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture

§ 60.470 Applicability and designation of affected facilities.

(a) The provisions of this subpart are applicable to the following affected facilities: Saturators; mineral handling and storage facilities; asphalt storage tanks; and blowing stills used for asphalt processing and asphalt roofing manufacture.

(b) The provisions of this subpart apply to any affected facility identified in paragraph (a) of this section, the construction or modification of which is begun after ———— (date of publication in the Fedral Register).

§ 60.471 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A of this part.

"Afterburner (A/B)" means an exhaust gas incinerator used to control emissions of particulate matter.

"Asphalt processing" means the storage and blowing of asphalt at asphalt roofing plants, oil refineries, and asphalt processing plants for use in the manufacture of asphalt roofing products.

"Asphalt roofing manufacture" means production of asphalt roofing (shingles, roll roofing, siding, or saturated felt).

"Asphalt storage tank" means any tank used to store hot asphalt for asphalt roofing manufacture or asphalt processing. Storage tanks may be located at asphalt roofing plants, oil refineries, and asphalt processing plants.

"Blowing still" means the equipment in which air is blown through hot asphalt flux to produce different grades of asphalt for the manufacture of asphalt roofing.

"Catalyst" means a substance which, when added to asphalt flux in a blowing still, alters the penetrating-softening point relationship and increases the rate of oxidation of the flux.

"Coating blow" means the process in which air is blown through hot asphalt flux to produce coating asphalt. The coating blow starts when the air is turned on and stops when the air is turned off.

"Electrostatic precipitator (ESP)" means an air pollution control device in which solid or liquid particulates in a gas stream are charged as they pass through an electric field and precipitated on a collection surface.

"High velocity air filter (HVAF)" means an air pollution control filtration device for the removal of sticky, oily, or liquid aerosol particulate matter from exhaust gas streams.

"Mineral handling and storage facility" means the areas in asphalt roofing plants in which minerals are unloaded from a carrier, the conveyor transfer points between the carrier and the storage silos, and the storage silos.

"Saturant blow" means the process in which air is blown through hot asphalt flux to produce saturant asphalt. The saturant blow starts when the air is turned on and stops when the air is turned off.

"Saturator" means the equipment in which asphalt is applied to felt to make asphalt roofing products. The term saturator includes the saturator, wet looper and coater.

§ 60.472 Standards for particulate matter.

(a) On or after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any saturator:

(1) Particulate matter in excess of:

(A) 0.04 kilograms of particulate per megagram of asphalt shingle or mineral-surfaced roll roofing produced, or

(B) 0.4 kilograms per megagram of saturated felt or smooth-surfaced roll roofing produced;

(2) Exhaust gases with opacity greater than 20 percent; and

(3) Any visible emissions from a saturator capture system for more than 20 percent of any period of consecutive valid observations totaling 60 minutes.

(b) On or after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any blowing still:

(1) Particulate matter in excess of 0.67 kilograms of particulate per megagram of asphalt charged to the still when a catalyst is added to the still; and

(2) Particulate matter in excess of 0.71 kilograms of particulate per megagram of asphalt charged to the still when a catalyst is added to the still and when No. 6 fuel oil is fired in the afterburner; and

(3) Particulate matter in excess of 0.60 kilograms of particulate per megagram of asphalt charged to the still during blowing without a catalyst; and

(4) Particulate matter in excess of 0.64 kilograms of particulate per megagram of asphalt charged to the still during blowing without a catalyst and when No. 6 fuel oil is fired in the afterburner; and

(5) Exhaust gases with an opacity greater than 0 percent.

(c) On or after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any asphalt storage tank exhaust gases with opacity greater than 0 percent. If, however, the emissions from any asphalt storage tank(s) are ducted to a control device for a saturator, the combined emissions shall meet the emission limit contained in paragraph (a) of this section during the time the saturator control device is operating. At any other time the asphalt storage tank(s) must meet the 0 percent opacity limit.

(d) On or after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any mineral handling and storage facility emissions with opacity greater than 1 percent.

§ 60.473 Monitoring of operations.

(a) The owner or operator subject to the provisions of this subpart, and using either an electrostatic precipitator or a high velocity air filter to meet the emission limit in § 60.472(a)(1) and/or (b)(1) shall continuously monitor and record the temperature of the gas at the inlet of the control device. The temperature monitoring instrument shall have an accuracy of ±5°C over its range.

(b) The owner or operator subject to the provisions of this subpart and using an afterburner to meet the emission limit in § 60.472(a)(1) and/or (b)(1) shall continuously monitor and record the temperature in the combustion zone of the afterburner. The monitoring instrument shall have an accuracy of ±10°C over its range.

(c) An owner or operator subject to the provisions of this subpart and using a control device not mentioned in paragraphs (a) and (b) of this section shall provide to the Administrator information describing the operation of the control device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Administrator may require continuous monitoring and will determine the process parameters to be monitored.

(d) For the purpose of reports required under § 60.7(c), periods of excess emissions that shall be reported are defined as any 6-hour period during which the average temperature measured in accordance with paragraph (a) of this section is above the temperature measured in accordance with § 60.474 (h) or (i) at a time when the emission limits in § 61.472 (a) or (b) were met, or the average temperature measured in accordance with paragraph (b) of this section falls below the temperature measured in accordance with § 60.474 (h) or (i) at a time when the emission limits in § 61.472 (a) or (b) were met. Each excess emission report shall include the value identified for the temperature specified under § 60.474 (h) or (i) and the monitored temperature value.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

§ 60.474 Test methods and procedures.

(a) Reference methods in Apendix A of this part, except as provided in § 60.8(b), shall be used to determine compliance with the standards prescribed in § 60.472 as follows:

(1) Method 26 for the concentration of particulate matter;

(2) Method 1 for sample and velocity traverses;

(3) Method 2 for velocity and volumetric flow rate;

(4) Method 3 for gas analysis; and

(5) The Administrator will determine compliance with the standards prescribed in § 60.472(a)(3) by using Method 22. During the test run, readings are to be recorded every 15 seconds for a period of consecutive observations during representative conditions (in accordance with § 60.8(c) of the General Provisions) totaling 60 minutes. A performance test shall consist of one run.

(b) For Method 26 the sampling time for each run on a saturator shall be at least 120 minutes, and the sampling volume shall be at least 3 dscm. Method 26 shall be used to measure the emissions from the saturator while the asphalt roofing plant is making 106.6-kg (235-lb) asphalt shingle if the final product is shingle or mineral-surfaced roll roofing or while the asphalt roofing plant is making 6.8-kg (15-lb) saturated felt if the final product is saturated felt or smooth-surfaced roll roofing. Method 26 shall be used to measure emissions from the blowing still for at least 90 minutes or for the duration of the coating blow whichever is greater. If the blowing still is not used to blow coating asphalt, Method 26 shall be used to measure emissions from the blowing still for at least 90 minutes or for the duration of the saturant blow, whichever is greater.

(c) The particulate emission rate, E, shall be computed as follows:

$$E = Q_{sd} \times C_s$$

(1) E is the particulate emission rate (kg/h);

(2) Q_{sd} is the average volumetric flow rate (dscm/h) as determined by Method 2; and

(3) C_s is the average concentration (kg/dscm) of particulate matter as determined by Method 26.

(d) The asphalt roofing production rate, P (Mg/h), shall be determined by dividing the weight in megagrams (Mg) of roofing produced on the shingle or saturated felt process lines during the performance test by the number of hours required to conduct the performance test. The roofing production shall be obtained by direct measurement.

(e) The production rate of asphalt from the blowing still, P_s (Mg/h), shall be determined by dividing the weight of asphalt charged to the still by the time required for the performance test during a coating asphalt blow. The weight of asphalt charged to the still shall be determined at the starting temperature of the coating blow. The weight of asphalt shall be converted from the volume measurement as follows:

M=Vd/c
M=weight of asphalt in megagram
V=volume of asphalt in cubic meters
d=density of asphalt in kilograms per cubic meter
c=conversion factor 1.000 kilograms per megagram

The density of asphalt at any measured temperature is calculated by using the following equation:

$d=1056.1-0.6176\times°C$

The method of measurement shall have an accuracy of ±10 percent.

(f) The saturator emission rate shall be computed as follows:

$R=E/P$

(g) The blowing still emission rate shall be computed as follows:

$R_s=E/P_s$

where:

(1) R is the saturator emission rate (kg/Mg);
(2) R_s is the blowing still emission rate (kg/Mg);
(3) E is the particulate emission rate (kg/hr) from paragraph (c) of this section;
(4) P is the asphalt roofing production rate (Mg/h); and
(5) P_s is the asphalt charging rate (Mg/h).

(h) Temperature shall be measured and continuously recorded with the monitor required under § 60.473 (a) or (b) during the measurement of particulate by Method 26.

(i) If at a later date the owner or operator believes the emission limits in § 60.472 (a) and (b) are being met even though the temperature measured in accordance with § 60.473 paragraphs (a) or (b) is exceeding that measured during the performance test, he may submit a written request to the Administrator to repeat the performance test and procedure outlined in paragraph (h) of this section.

(Sec. 114, Clean Air Act as amended (42 U.S.C. 7414))

2. By adding Method 26 and Method 22 to Appendix A as follows:

Appendix A—Reference Methods

* * * * *

Method 26—Determination of Particulate Emissions From the Asphalt Processing and Asphalt Roofing Industry

1. *Applicability and Principle.*

1.1 *Applicability.* This method applies to the determination of particulate emissions from asphalt roofing industry process saturators, blowing stills, and other sources as specified in the regulations.

1.2 *Principle.* Particulate matter is withdrawn isokinetically from the source and collected on a glass fiber filter maintained at a temperature no greater than 52° C (126° F). The particulate mass, which includes any material that condenses at or above the filtration temperature, is determined gravimetrically after removal of uncombined water.

2. *Apparatus.*

2.1 *Sampling Train.* The sampling train configuration is the same as shown in Figure 5-1 of Method 5, except a precollector cyclone is added between the probe and the heated filter and is located in the heated section of the train. The sampling train consists of the following components:

2.1.1 *Probe Nozzle, Pitot Tube, Differential Pressure Gauge, Filter Holder, Condenser, Metering System, Barometer, and Gas Density Determination Equipment.* Same as Method 5, Sections 2.1.1, 2.1.3 to 2.1.5, and 2.1.7 to 2.1.10, respectively.

2.1.2 *Probe Liner.* Same as in Reference Method 5, Section 2.1.2, with the note that at high stack gas temperatures [greater than 250° C (480° F)], water-cooled probes may be required to control the probe exit temperature to no greater than about 52° C (126° F).

2.1.3 *Precollector Cyclone.* Borosilicate glass following the construction details shown in APTD-0581.

Note.—The tester shall use the cyclone when the stack gas moisture is greater than 10 percent or when the stack gas oil concentration is high enough to cause oil to seep through the glass mat filter. The tester need not use the precollector cyclone or glass wool under other, less severe test conditions.

2.1.4 *Filter Heating System.* Any heating (or cooling) system capable of maintaining a sample gas temperature at the exit end of the filter holder during sampling of no greater than 52° C (126° F). Install a temperature gauge capable of measuring temperature to within 3° C (5.4° F) at the exit end of the filter holder so that the sample gas temperature can be regulated and monitored during sampling. The tester may use systems other than the one shown in APTD-0581.

2.2 *Sample Recovery.* The equipment required for sample recovery is as follows:

2.2.1 *Probe-Liner and Probe-Nozzle Brushes, Graduated Cylinder and/or Balance, Plastic Storage Containers, and Funnel and Rubber Policeman.* Same as Method 5, Sections 2.2.1, 2.2.5, 2.2.6, and 2.2.7, respectively.

2.2.2 *Wash Bottles.* Glass.

2.2.3 *Sample Storage Containers.* Chemically resistant, borosilicate glass bottles, with rubber-backed Teflon screw cap liners or caps that are constructed so as to be leak-free and resistant to chemical attack by 1,1,1-trichloroethane (TCE), 500-ml or 1000-ml. (Narrow mouth glass bottles have been found to be less prone to leakage.)

2.2.4 *Petri Dishes.* Glass, unless otherwise specified by the Administrator.

2.2.5 *Funnel.* Glass.

2.3 *Analysis.* For analysis, the following equipment is needed:

2.3.1 *Glass Weighing Dishes, Desiccator, Analytical Balance, Balance, Hygrometer, and Temperature Gauge.* Same as Method 5, Sections 2.3.1 to 2.3.4, 2.3.6, and 2.3.7, respectively.

2.3.2 *Beakers.* Glass, 250-ml and 500-ml

2.3.3 *Separatory Funnel.* 100-ml or greater.

3. *Reagents.*

3.1 *Sampling.* The reagents used in sampling are as follows:

3.1.1 *Filters, Silica Gel, and Crushed Ice.* Same as Method 5, Sections 3.1.1, 3.1.2, and 3.1.4, respectively.

3.1.2 *Precollector Glass Wool.* No. 7220, Pyrex brand or equivalent.

3.1.3 *Stopcock Grease.* TCE-insoluble, heat-stable grease (if available). This is not necessary if screw-on connectors with Teflon sleeves, or similar, are used.

3.2 *Sample Recovery.* Reagent grade 1,1,1-trichloroethane (TCE), ≤0.001 percent residue, and stored in glass bottles is required. Run TCE blanks prior to field use and use only TCE with low blank values (≤0.001 percent). The tester shall in no case subtract a blank value of greater than 0.001 percent of the weight of TCE used from the sample weight.

3.3 *Analysis.* Two reagents are required for the analysis:

3.3.1 *TCE.* Same as 3.2.

3.3.2 *Desiccant.* Same as Method 5, Section 3.3.2.

4. *Procedure.*

4.1 *Sampling Train Operation.* The complexity of this method is such that, in order to obtain reliable results, testers should be trained and experienced with Method 5 test procedures.

4.1.1 *Pretest Preparation.* Maintain and calibrate all the components according to the procedure described in APTD-0576, unless otherwise specified herein.

Prepare probe liners and sampling nozzles as needed for use. Thoroughly clean each component with soap and water, followed by a minimum of three TCE rinses. Use the probe and nozzle brushes during at least one of the TCE rinses (refer to Section 4.2 for rinsing techniques). Cap or seal the open ends of the probe liners and nozzles to prevent contamination during shipping.

Prepare silica gel portions and glass filters as specified in Method 5, Section 4.1.1.

Prepare cyclone precollector systems for use as follows: Desiccate or oven-dry plugs of glass wool as needed and weigh these to a constant weight (use techniques similar to those described above for glass fiber filters). Place each tared glass wool plug in a labeled petri dish. Next, thoroughly clean equal numbers of glass cyclones and 125-ml Erlenmeyer flasks, using soap and water, followed by several TCE rinses. Pair each cyclone with a flask and identify (mark or label) each piece of glassware. Determine the tare weight of each glass cyclone to the nearest 0.1 mg. Seal the open ends of each flask and cyclone to prevent contamination during transport.

4.1.2 *Preliminary Determinations.* Select the sampling site, probe nozzle, and probe length as specified in Method 5, Section 4.1.2.

Select a total sampling time greater than or equal to the minimum total sampling time specified in the test procedures section of the applicable regulation. Follow the guidelines outlined in Method 5, Section 4.1.2, for sampling time per point and total sample volume collected.

4.1.3 *Preparation of Collection Train.* Prepare the collection train as specified in Method 5, Section 4.1.3 with the addition of the following.

If a precollector cyclone is to be used with a tared glass wool plug (see note in Section 2.1.2), prepare this by placing the glass wool plug into the inlet section of the cyclone near the top. Loosely pack the glass wool so as to

avoid high pressure drops in the sampling train. See Figure 26–1. Connect the cyclone to the correpsonding 125-ml Erlenmeyer flask.

Set up the sampling train as shown in Figure 5–1 of Method 5 with the addition of the precollector cyclone, if used, between the probe and filter holder. Use no stopcock grease on ground glass joints unless the grease is insoluble in TCE.

4.1.4 *Leak Check Procedures.* Follow the procedures given in Method 5, Sections 4.1.4.1 (Pretest Leak Check), 4.1.4.2 (Leak Check During Sample Run), and 4.1.4.3 (Post-Test Leak Check).

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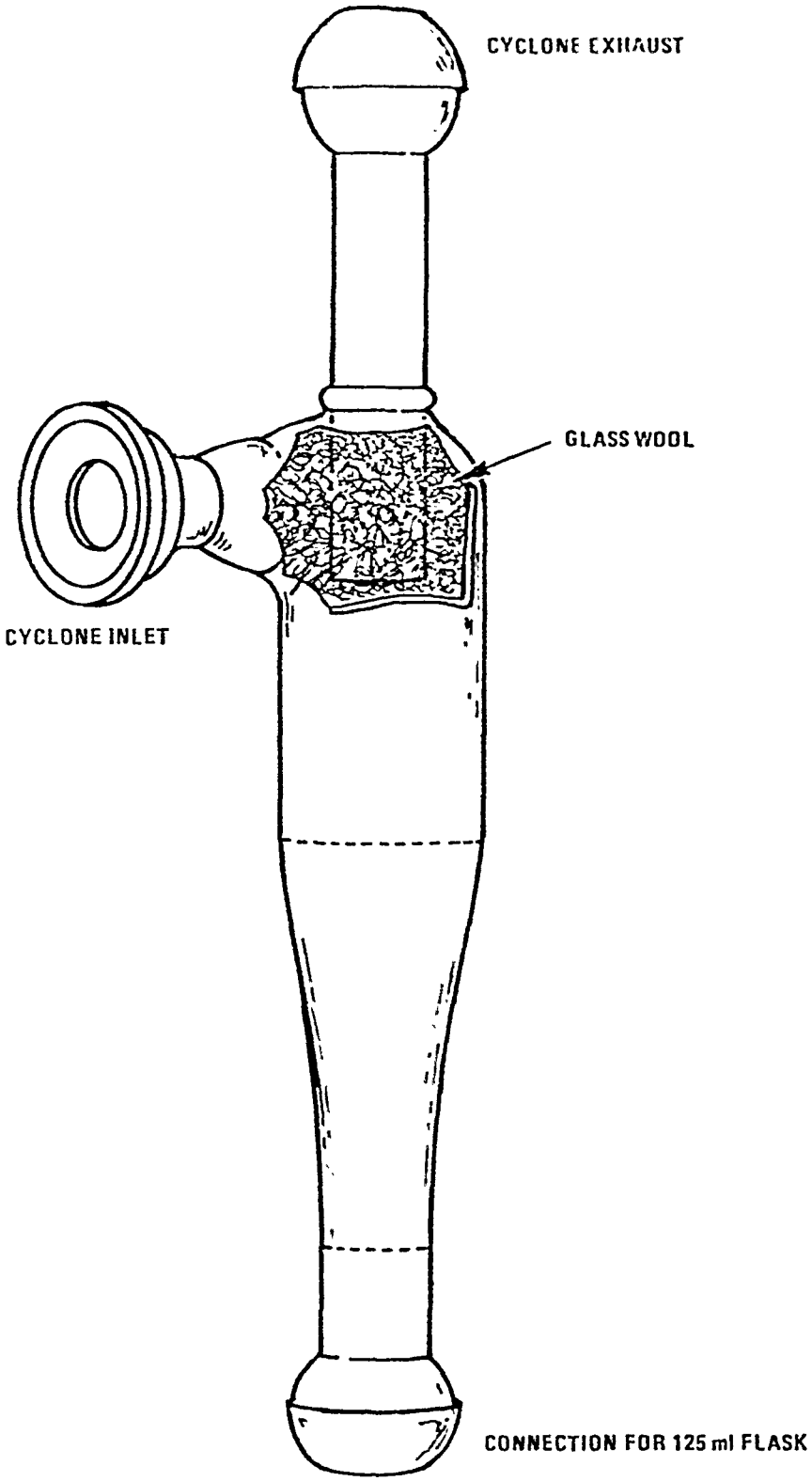

Figure 26-1. Precollector cyclone with glass wool plug.

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4.1.5 *Particulate Train Operation.* Operate the sampling train as described in Method 5, Section 4.1.5, except maintain the gas temperature exiting the filter at no greater than 52°C (126°F).

4.1.6 *Calculation of Percent Isokinetic.* Same as in Method 5, Section 4.1.6.

4.2 *Sample Recovery.* Begin proper cleanup procedure as soon as the probe is removed from the stack at the end of the sampling period. Allow the probe to cool. When the probe can be safely handled, wipe off all external particulate matter near the tip of the probe nozzle and place a cap over it to prevent losing or gaining particulate matter. Do not cap off the probe tip tightly while the sampling train is cooling as this would create a vacuum in the filter holder, thus drawing water from the impingers into the filter holder.

Before moving the sampling train to the cleanup site, remove the probe from the sampling train, wipe off the stopcock grease, and cap the open outlet of the probe. Be careful not to lose any condensate that might be present. Wipe off the stopcock grease from the filter inlet where the probe was fastened and cap it. Remove the umbilical cord from the last impinger and cap the impinger. If a flexible line is used between the first impinger or condenser and the filter holder, disconnect the line at the filter holder and let any condensed water or liquid drain into the impingers or condenser. After wiping off the stopcock grease, cap off the filter holder outlet and impinger inlet. The tester may use either ground-glass stoppers, plastic caps, or serum caps to close these openings.

Transfer the probe and filter-impinger assembly to a cleanup area which is clean and protected from the wind so that the chances of contaminating or losing the sample will be minimized.

Inspect the train prior to and during disassembly and note any abnormal conditions. Treat the samples as follows:

4.2.1. *Container No. 1 (Filter).* Carefully remove the filter from the filter holder and place it in its identified petri dish container.

Use a pair of tweezers and/or clean disposable surgical gloves to handle the filter. If it is necessary to fold the filter, do so such that the film of oil is inside the fold. Carefully transfer to the petri dish any particulate matter and/or filter fibers which adhere to the filter holder gasket, by using a dry nylon bristle brush and/or a sharp-edged blade. Seal the container.

4.2.2 *Container No. 2 (Cyclone).* Remove the Erlenmeyer flask from the cyclone. Using glass or other nonreactive caps, seal the ends of the cyclone and store for shipment to the laboratory. Do not remove the glass wool plug from the cyclone.

4.2.3 *Container No. 3 (Probe to Filter Holder).* Taking care to see that material on the outside of the probe or other exterior surfaces does not get into the sample, quantitatively recover particulate matter or any condensate from the probe nozzle, probe fitting, probe liner, cyclone collector flask, and front half of the filter holder by washing these components with TCE and placing the wash in a glass container. Carefully measure the total amount of TCE used in the rinses. Perform the TCE rinses as follows:

Carefully remove the probe nozzle and rinse the inside surface with TCE from a wash bottle. Brush with a nylon bristle brush and rinse until the TCE rinse shows no visible particles or discoloration, after which, make a final rinse of the inside surface.

Brush and rinse the inside parts of the Swagelok fitting with TCE in a similar way until no visible particles remain.

Rinse the probe liner with TCE. While squirting TCE into the upper end of the probe, tilt and rotate the probe so that all inside surfaces will be wetted. Let the TCE drain from the lower end into the sample container. The tester may use a glass funnel to aid in transferring the liquid washes to the container. Follow the TCE rinse with a probe brush. Hold the probe in an inclined position, squirt TCE into the upper end as the probe brush is being pushed with a twisting action through the probe, hold the sample container underneath the lower end of the probe, and catch any TCE and particulate matter which is brushed from the probe. Run the brush through the probe three times or more until no visible particulate matter is carried out or until no discoloration is observed in the TCE. With stainles steel or other metal probes, run the brush through in the above prescribed manner at least six times, since metal probes have small crevices in which particulate matter can be entrapped. Rinse the brush with TCE and quantitatively collect these washings in the sample container. After the brushing, make a final TCE rinse of the probe as described above.

It is recommended that two people clean the probe to minimize sample losses. Between sampling runs, keep brushes clean and protected from contamination.

Brush and rinse the inside of the cyclone collection flask and the front half of the filter holder. Brush and rinse each surface three times or more, if necessary, to remove visible particulate. Make a final rinse of the brush and filter holder. After all TCE washings and particulate matter have been collected in the sample container, tighten the lid on the sample container so that TCE will not leak out when it is shipped to the laboratory. Mark the height of the fluid level to determine later whether or not leakage occurred during transport. Label the container to clearly identify its contents. Whenever possible, containers should be shipped in such a way that they remain upright at all times.

4.2.4. *Container No. 4 (Silica Gel).* Note the color of the indicating silica gel to determine if it has been completely spent and make a notation of its condition. Transfer the silica gel from the fourth impinger to its original container and seal. The tester may use as aids a funnel to pour the silica gel without spilling and a rubber policeman to remove the silica gel from the impinger. It is not necessary to remove the small amount of dust particles that may adhere to the impinger wall and are difficult to remove. Since the gain in weight is to be used for moisture calculations, do not use any water or other liquids to transfer the silica gel. If a balance is available in the field, follow the procedure for Container No. 4 in Section 4.3.4.

4.2.5 *Impinger Water.* Treat the impingers as follows: Make a notation of any color or film in the liquid catch. Measure the liquid volume in the first three impingers to within ±1 ml by using a graduated cylinder or weigh the liquid to within ±0.5 g by using a balance. Record the volume or weight of liquid present, then discard the liquid. (This volume or weight information is required to calculate the moisture content of the effluent gas.)

4.2.6 *Blank.* Save a portion of the TCE used for cleanup as a blank. Take 200 ml of this TCE directly from the wash bottle being used and place it in a glass sample container labeled "TCE blank."

4.3 *Analysis.* Record the data required on a sheet such as the one shown in Figure 26-2. Handle each sample container as follows:

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Plant: _____

Date: _____

Run No.: _____

Filter No.: _____

Amount liquid lost during transport: _____

TCE blank volume, ml: _____

TCE wash volume, ml: _____

TCE blank concentration, mg/mg (equation 4): _____

TCE wash blank, mg (equation 5): _____

CONTAINER NUMBER	WEIGHT OF PARTICULATE COLLECTED, mg		
	FINAL WEIGHT	TARE WEIGHT	WEIGHT GAIN
1			
2			
3			
Total			
	Less TCE blank		
	Weight of particulate matter		

	VOLUME OF LIQUID WATER COLLECTED		
	IMPINGER VOLUME, ml	SILICA GEL WEIGHT, g	
FINAL			
INITIAL			
LIQUID COLLECTED			
TOTAL VOLUME COLLECTED		g *	ml

*CONVERT WEIGHT OF WATER TO VOLUME BY DIVIDING TOTAL WEIGHT INCREASE BY DENSITY OF WATER (1g/ml).

$$\frac{\text{INCREASE, g}}{\text{1g/ml}} = \text{VOLUME WATER, ml}$$

Figure 26-2. Analytical data.

BILLING CODE 6560-26-C

4.3.1 *Container No. 1 (Filter).* Transfer the filter from the sample container to a tared glass weighing dish and desiccate for 24 hours in a desiccator containing anhydrous calcium sulfate. Rinse Container No. 1 with a measured amount of TCE and analyze this rinse with the contents of Container No. 3. Weigh the filter to a constant weight. For the purpose of Section 4.3, the term "constant weight" means a difference of no more than 10 percent or 2 mg (whichever is greater) between two consecutive weighings made 24 hours apart. Report the "final weight" to the nearest 0.1 mg as the average of these two values.

4.3.2 *Container No. 2 (Cyclone).* Clean the outside of the cyclone, remove the caps, and desiccate for 24 hours or until any condensed water has evaporated. Weigh the cyclone plus contents (glass wool plug and oil). Determine the weight of the oil by subtracting out the combined tare weight of the cyclone plus glass wool. Transfer the glass wool and cyclone catch into a tared weighing dish; use TCE to aid in the transfer process. Desiccate the cleaned cyclone for 24 hours and reweigh the cyclone. If the final weight of the clean cyclone is within 10 mg of its initial tare weight, report the calculated oil weight. However, if the weight difference is greater, extract the oil from the glass wool (use measured amount of TCE) and analyze this oil solution with Container No. 3. Be careful not to include any of the glass wool fibers.

4.3.3 *Container No. 3 (Probe to Filter Holder).* Before adding either the rinse from Container No. 1 or the TCE-oil mixture from the glass wool extraction to Container No. 3, note the level of liquid in the container and confirm on analysis sheet whether or not leakage occurred during transport. If noticeable leakage occurred, either void the sample or take steps, subject to the approval of the Administrator, to correct the final results.

Measure the liquid in this container either volumetrically to ± ml or gravimetrically to ±0.5 g. Check to see if there is any appreciable quantity or condensed water present in the TCE rinse (look for a boundary layer or phase separation). If the volume of condensed water appears larger than 5 ml, separate the oil-TCE fraction from the water fraction using a separatory funnel. Measure the volume of the water phase to the nearest ml; adjust the stack gas moisture content, if necessary (see Sections 6.4 and 6.5). Next, extract the water phase with several 25-ml portions of TCE until, by visual observation, the TCE does not remove any additional organic material. Evaporate the remaining water fraction to dryness at 93°C (200°F), desiccate for 24 hours, and weigh to the nearest 0.1 mg.

Treat the total TCE fraction (including TCE from filter container rinse, water phase extractions, and glass wool extraction, if applicable) as follows: Transfer the TCE and oil to a tared beaker and evaporate at ambient temperature and pressure. The evaporation of TCE from the solution may take several days. Do not desiccate the sample until the solution reaches an apparent constant volume or until the odor of TCE is not detected. When it appears that the TCE has evaporated, desiccate the sample and weigh it at 24 hour intervals to obtain a "constant weight" (as defined for Container No. 1 above). The "total weight" for Container No. 3 is the sum of the evaporated particulate weight of the TCE-oil and water phase fractions. Report the results to the nearest 0.1 mg.

4.3.4 *Container No. 4 (Silica Gel).* This step may be conducted in the field. Weigh the spent silica gel (or silica gel plus impinger) to the nearest 0.5 using a balance.

4.3.5 *"TCE Blank" Container.* Measure TCE in this container either volumetrically or gravimetrically. Transfer the TCE to a tared 250-ml beaker and evaporate to dryness at ambient temperature and pressure. Desiccate for 24 hours and weigh to a constant weight. Report the results to the nearest 0.1 mg.

5. *Calibration.*

Calibrate the sampling train components according to the indicated sections of Method 5: Probe Nozzle (5.1), Pitot Tube Assembly (5.2), Metering System (5.3), Probe Heater (5.4), Temperature Gauges (5.5), Leak Check of Metering System (5.6), and Barometer (5.7).

6. *Calculations.*

6.1 *Nomenclature.* Same as in Reference Method 5, Section 6.1, with the following additions:

C_t=TCE blank residue concentration, mg/g.
M_t=Mass of residue of TCE after evaporation, mg.
V_{pc}=Volume of water collected in precollector, ml.
V_t=Volume of TCE blank, ml.
V_{tw}=Volume of TCE used in wash, ml.
W_t=Weight of residue in TCE wash, mg.
P_t=Density of TCE, mg/ml (see label on bottle).

6.2 *Dry Gas Meter Temperature and Orifice Pressure Drop.* Using the data obtained in this test, calculate the average dry gas meter temperature and average orifice pressure drop (see Figure 5-2 of Method 5).

6.3 *Dry Gas Volume.* Using the data from this test, calculate $V_{m(std)}$ by using Equation 5-1 of Method 5. If necessary, adjust the volume for leakages.

6.4 *Volume of Water Vapor.*

$$V_{w(std)}=K_1(V_{lc}+V_{pc}) \quad \text{Eq. 26-1}$$

Where:

K_1=0.00133 m³/ml for metric units.
=0.04707 ft³/ml for English units.

6.5 *Moisture Content.*

$$B_{ws}=V_{w(std)}/V_{m(std)}+V_{w(std)} \quad \text{Eq. 26-2}$$

Note.—In saturated or water droplet-laden gas streams, two calculations of the moisture content of the stack gas shall be made, one from the impinger and precollector analysis (Equations 26-1 and 26-2) and a second from the assumption of saturated conditions. The lower of the two values of moisture content shall be considered correct. The procedure for determining the moisture content based upon assumption of saturated conditions is given in the note of Section 1.2 of Reference Method 4. For the purpose of this method, the average stack gas temperature from Figure 2 may be used to make this determination, provided that the accuracy of the in-stack temperature sensor is within ±1°C (2°F).

6.6 *TCE Blank Concentration.*

$$C_t=M_t/V_tP_t \quad \text{Eq. 26-3}$$

6.7 *TCE Wash Blank.*

$$W_t=(C_t)(V_{tw})(P_t) \quad \text{Eq. 26-4.}$$

6.8 *Total Paticulate Weight.* Determine the total particulate catch from the sum of the weights obtained from Containers 1, 2, and 3 less the TCE blank.

6.9 *Particulate Concentration.*

$$C_s=K_2M_n/V_{m(std)} \quad \text{Eq. 26-5}$$

Where:

K_2=0.001 g/mg.

6.10 *Isokinetic Variation and Acceptable Results.* Method 5, Sections 6.11 and 6.12, respectively.

7. *Bibliography.*

The bibliography for Reference Method 26 is the same as for Method 5, Section 7.

Method 22—Visual Determination of Fugitive Emissions From Material Processing Sources

1. *Introduction.*

This method involves the visual determination of fugitive emissions; i.e., emissions not emitted directly from a process stack or duct. Fugitive emissions inlcudo emissions that: (1) Escape capture by process equipment exhaust hoods; (2) are emitted during material transfer; (3) are emitted from buildings housing material processing or handling equipment; (4) are emitted directly from process equipment.

This method determines the amount of time that any visible emissions occur during the observation period; i.e., the accumulated emission time. This method does not require that the opacity of emissions be determined. Since this procedure requires only the determination of whether a visible emission occurs and does not require the determination of opacity levels, observer certification according to the procedures of Reference Test Method 9 are not required. However, it is necessary that the observer is educated on the general procedures for determining the level of visible emissions. As a minimum the observer should be trained regarding the effects on the visibility of emissions caused by background contrast, ambient lighting, observer position relative to lighting, wind, and the presence of uncombined water (condensing water vapor).

2. *Applicability and Principle.*

2.1 Applicability. This method applies to the determination of the frequency of fugitive emissions from stationary sources (located indoors or outdoors) when specified as the test method for determining compliance with new source performance standards.

2.2 Principle. Fugitive emissions produced during material processing, handling, and transfer operations are visibly determined by an observer without the aid of instruments.

3. *Definitions.*

3.1 Emission Frequency. Percentage of time that emissions are visible during the observation period.

3.2 Emission Time. Accumulated amount of time that emissions are visible during the observation period.

3.3 Fugitive Emission. Pollutant generated by an affected facility which is not collected by a capture system and is released to the atmosphere.

3.4 Observation Period. Accumulated time period during which observations are conducted, not to be less than 6 minutes.

4. *Equipment.*

4.1 Stopwatches. Accumulative type, with a sweep second hand and unit divisions of at least 0.5 second; two required.

4.2 Light Meter. Light meter capable of measuring illuminance in the 50- to 200-lux range; required for indoor observations only.

5. *Procedure.*

5.1 Position. Survey the affected facility or building or structure housing the process unit to be observed and determine the locations of potential emissions. If the affected facility is located inside a building, determine an observation location that is consistent with the requirements of the applicable regulation (i.e., outside observation of emissions escaping the building/structure or inside observation of emissions directly emitted from the affected facility process unit).

Then select a position that enables a clear view of the potential emission point(s) of the affected facility or of the building or structure housing the affected facility, as appropriate for the applicable subpart. A position of at least 15 feet but not more than 0.25 mile from the emission source is recommended. For outdoor locations, the observer should be positioned so that the sun is not directly in the observer's eyes.

5.2 Field Records.

5.2.1 Outdoor Location. Record the following information on the field data sheet (Figure 22–1): company name, industry, process unit, observer's name, observer's affiliation, and date. Record also the estimated wind speed, wind direction, and sky condition. Sketch the process unit being observed and note observer location relative to the source and the sun. Indicate the potential and actual fugitive emission points on the sketch.

BILLING CODE 6560–26–M

FUGITIVE EMISSION INSPECTION
OUTDOOR LOCATION

Company _____	Observer _____
Location _____	Affiliation _____
Company representative _____	Date _____
Sky conditions _____	Wind direction _____
Precipitation _____	Wind speed _____
Industry _____	Process unit _____

Sketch process unit; indicate observer position relative to source and sun; indicate potential emission points and/or actual emission points.

OBSERVATIONS

	Clock time	Observation period duration, min:sec	Accumulated emission time, min:sec
Begin observation			
End observation			

Figure 22-1

BILLING CODE 6560-26-C

5.2.2 Indoor Location. Record the following information on the field data sheet (Figure 22-2): company name, industry, process unit, observer's name, observer's affiliation, and date. Record, as appropriate, the type, location, and intensity of lighting on the data sheet. Sketch the process unit being observed and note observer location relative to the source. Indicate the potential and actual fugitive emission points on the sketch.

5.3 Indoor Lighting Requirements. For indoor locations, use a light meter to measure the level of illumination at a location as close to the emission source(s) as is feasible. An illumination of greater than 100 lux (10 foot candles) is considered necessary for proper application of this method.

5.4 Observations. Record the clock time when observations begin. Use one stopwatch to monitor the duration of the observation period; start this stopwatch when the observation period begins. If the observation period is divided into two or more segments by process shutdowns or observer rest breaks, stop the stopwatch when a break begins and restart it without resetting when the break ends. Stop the stopwatch at the end of the observation period. The accumulated time indicated by this stopwatch is the duration of the observation period. When the observation period is completed, record the clock time.

BILLING CODE 6560-26-M

FUGITIVE EMISSION INSPECTION
INDOOR LOCATION

Company _____	Observer _____
Location _____	Affiliaton _____
Company representative _____	Date _____
Industry _____	Process unit _____

Light type (flourescent, incandescent, natural) _____

Light location (overhead, behind observer, etc.) _____

Illuminance (lux or footcandles) _____

Sketch process unit; indicate observer position relative to source; incicate potential emission points and/or actual emission points.

OBSERVATIONS

	Clock time	Observation period duration, min:sec	Accumulated emission time, min:sec
Begin observation	_____		
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
	_____	_____	_____
End observation	_____		

Figure 22-2

BILLING CODE 6560-26-C

During the observation period, continuously watch the emission source. Upon observing an emission (condensed water vapor is not considered an emission), start the second accumulative stopwatch; stop the watch when the emission stops. Continue this procedure for the entire observation period. The accumulated elapsed time on this stopwatch is the total time emissions were visible during the observation period i.e., the emission time.

5.4.1 *Observation Period.* Choose an observation period of sufficient length to meet the requirements for determining compliance with the emission regulation in the applicable subpart. When the length of the observation period is specifically stated in the applicable subpart, it may not be necessary to observe the source for this entire period if the emission time required to indicate noncompliance (based on the specified observation period) is observed in a shorter time period. In other words, if the regulation prohibits emissions for more than 6 minutes in any hour, then observations may (optional) be stopped after an emission time of 6 minutes is exceeded. Similarly, when the regulation is expressed as an emission frequency and the regulation prohibits emissions for greater than 10 percent of the time in any hour, then observations may (optional) be terminated after 6 minutes of emissions are observed since 6 minutes is 10 percent of an hour. In any case, the observation period shall not be less than 6 minutes in duration. In some cases, the process operation may be intermittent or cyclic. In such cases, it may be convenient for the observation period to coincide with the length of the process cycle.

5.4.2 Observer Rest Breaks. Do not observe emissions continuously for a period of more than 15 to 20 minutes without taking a rest break. For sources requiring observation periods of greater than 20 minutes, the observer shall take a break of not less than 5 minutes and not more than 10 minutes after every 15 to 20 minutes of observation. If continuous observations are desired for extended time periods, two observers can alternate between making observations and taking breaks.

5.4.3 Visual Interference. Occasionally, fugitive emissions from sources other than the affected facility (e.g., road dust) may prevent a clear view of the affected facility (e.g., road dust) may prevent a clear view of the affected facility. This may particularly be a problem during periods of high wind. If the view of the potential emission points is obscured to such a degree that the observer questions the validity of continuing observations, then the observations are terminated and the observer clearly notes this fact on the data form.

5.5 Recording Observations. Record the accumulated time of the observation period on the data sheet as the observation period duration. Record the accumulated time emissions were observed on the data sheet as the emission time. Record the clock time the observation period began and ended, as well as the clock time any observer breaks began and ended.

6. *Calculations.*

If the applicable subpart requires that the emission rate be expressed as an emission frequency (in percent), determine this value as follows: Divide the accumulated emission time (in seconds) by the duration of the observation period (in seconds) or by any minimum observation period required in the applicable subpart if the actual observation period is less than the required period and multiply this quotient by 100.

[FR Doc 80-35905 Filed 11-17-80 8:45 am]
BILLING CODE 6560-26-M

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40 CFR Part 60

[AD FRL-1505-7a]

Standards of Performance for new Stationary Sources; Priority List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed amendment.

SUMMARY: Studies of the asphalt processing and roofing industry have revealed that asphalt is processed at oil refineries and asphalt processing plants as well as at asphalt roofing plants. These locations were not specifically included in the asphalt roofing source category included in the priority list for regulation of new sources under Section 111 of the Clean Air Act, promulgated on August 21, 1979. Therefore, the Administrator is proposing to amend the priority list to specifically include asphalt processing locations in the source category currently listed as asphalt roofing plants. The proposed amendment to the priority list is based on the Administrator's judgment that asphalt blowing stills and storage tanks at asphalt processing facilities and oil refineries contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

DATES: *Comments.* Comments must be received on or before January 19, 1981.

Public Hearing. A public hearing will be held, if requested. Persons wishing to request a public hearing must contact EPA by December 8, 1981. If a hearing is requested, an announcement of the date and place will appear in a separate Federal Register notice.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A-130), Attention: Docket No. OAQPS A-79-39, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Public Hearing. Persons wishing to request a public hearing should notify Ms. Deanna B. Tilley, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5477.

Background Information Document. Background Information on the emissions from the asphalt processing and roofing manufacturing industry may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "Asphalt Roofing Manufacturing Industry, Background Information for Proposed Standards," EPA-450/3-80-021a.

Docket. A docket, number OAQPS A-79-39, containing information used by EPA in development of the standards of performance for the asphalt processing and roofing manufacturing industry, is available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday, at EPA's Central Docket Section (A-130), West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Susan R. Wyatt, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5477.

SUPPLEMENTARY INFORMATION:

Proposal To Amend Priority List

The Clean Air Act of 1970 established a program under Section 111 to develop standards of performance for new stationary sources which the Administrator determines may contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Section 111 of the Clean Air Act Amendments of 1977 requires that the Administrator publish, and from time to time revise, a list of categories of major stationary sources for which standards of performance for new sources are to be promulgated.

In developing priorities, Section 111 specifies that the Administrator consider (1) the quantity of emissions from each source category, (2) the extent to which each pollutant endangers public health or welfare, and (3) the mobility and competitive nature of each stationary source category.

The priority list, which identifies major source categories in order of priority for development of regulations, was proposed on August 31, 1978 and promulgated, after revisions, on August 21, 1979 (40 CFR 60.16, 44 FR 49222). Of the 59 source categories on the list, asphalt roofing plants are listed as number 45.

Source categories are intended to be broad enough in scope to include all processes associated with the particular

industry. In the asphalt roofing industry studies have revealed that initial steps in the preparation of asphalt for roofing manufacture may take place not only at roofing plants but also at locations which do not manufacture roofing products. These locations were not specifically listed with the asphalt roofing source category included in the priority list promulgated on August 21, 1979. Blowing stills, where air is forced through hot asphalt flux (crude oil residuum) as the initial step in asphalt processing, may be located at oil refineries and/or asphalt processing plants as well as at asphalt roofing plants. The coating and saturant asphalts which result from the blowing process are stored in tanks located at oil refineries and asphalt processing plants as well as at roofing plants. These two facilities at either an oil refinery or an asphalt processing plant would contribute more than 100 tons of particulate emissions per year and are, therefore, considered major sources.

The emissions, processes, and applicable controls for blowing stills and asphalt storage tanks at oil refineries and asphalt processing plants are the same as those at asphalt roofing plants. It is therefore reasonable to treat the asphalt processing and roofing manufacture industry as a single category of sources for the purposes of establishing standards of performance.

In the Administrator's judgment, asphalt processing operations which take place at oil refineries and asphalt processing plants contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

Proposed standards of performance for Asphalt Processing and Roofing Manufacture appear elsewhere in this issue of the Federal Register.

(Sec. 111, 301(a), Clean Air Act as amended, (42 U.S.C. 7411, 7601(b)))

Dated: November 10, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend 40 CFR Part 60, subpart A, as follows:

§ 60.16 Priority list.

* * * * *

45. Asphalt Processing and Roofing Manufacture

* * * * *

(Sec. 111, 301(a), Clean Air Act as amended (42 U.S.C. 7411, 7601(a)))

[FR Doc. 80-35906 Filed 11-17-80; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.
Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

ENVIRONMENTAL PROTECTION AGENCY

72944 11-3-80 / General pretreatment regulations for existing and new sources, approval of State programs

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

National Institute on Drug Abuse—

62694 9-19-80 / Joint revision of conditions for use of methadone for treating narcotic addicts

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws. A complete cumulative listing through Public Law 96-483 was published in the Reader Aids section of the issue of Wednesday, November 5, 1980.

Last Listing October 24, 1980

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WHEN: December 5 and 19, January 16 and 30; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call King Banks, Workshop Coordinator, 202-523-5235.